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SUPREME COURT, U.S.

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SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1952

No. 512

SECURITIES AND EXCHANGE COMMISSION,
PETITIONER.

VS.

RALSTON PURINA COMPANY

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF
APPEALS FOR THE EIGHTH CIRCUIT

PETITION FOR CERTIORARI FILED DECEMBER 22, 1952

CERTIORARI GRANTED MARCH 9, 1953

In the United States Court of Appeals for the Eighth Circuit

No. 14611

Civil

SECURITIES AND EXCHANGE COMMISSION,

~~PETITIONER~~ *Appellant*

v.

RALSTON PURINA COMPANY, ~~RESPONDENT~~

appellee

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In the District Court of the United States for the Eastern District of Missouri, Eastern Division

Civil Action File No. 8212

SECURITIES AND EXCHANGE COMMISSION, PLAINTIFF

v.

RALSTON PURINA COMPANY, A MISSOURI CORPORATION,
DEFENDANT

Complaint

1. It appears to the plaintiff that the defendant is engaged and is about to engage in acts and practices which constitute and will constitute violations of Section 5 (a) of the Securities Act of 1933 (15 U. S. C. 77e (a)); and the plaintiff, pursuant to Section 20 (b) of said Act (15 U. S. C. 77t (b)), brings this action to enjoin such acts and practices.

2. This action arises under Section 22 (a) of the Securities Act of 1933 (15 U. S. C. 77v (a)) as hereinafter more fully appears.

3. Since on or about October 1, 1947, the defendant has been and is now selling securities, namely \$25.00 par value common stock of Ralston Purina Company, and in the sale of such securities has been and is now, directly and indirectly, using the mails and the means and instruments of transportation and communication in interstate commerce, and has been carrying and causing to be carried, and is about to carry and cause to be carried, such securities through the mails and in interstate commerce, by means and instruments of transportation, for the purpose of sale and delivery after sale.

4. No registration statement with respect to such securities is in effect with the Securities and Exchange Commission.

5. The defendant will, unless enjoined, continue to engage in the acts and practices set forth in this complaint.

Wherefore, the plaintiff demands a temporary restraining order, a preliminary injunction, and a final judgment enjoining the defendant, its agents, servants, employees, attorneys and assigns, and each of them, from directly or indirectly:

(a) making use of any means or instruments of transportation or communication in interstate commerce, or of the mails,

to sell \$25.00 par value common stock of Ralston Purina Company, or any other securities, through the use or medium of any prospectus or otherwise;

(b) carrying such securities or causing them to be carried through the mails or in interstate commerce by any means or instruments of transportation for the purpose of sale or delivery after sale;

unless and until a registration statement is in effect with the Securities and Exchange Commission as to such securities; provided that the foregoing shall not apply to any security or transaction which is exempt from the provisions of Section 5 of the Securities Act of 1933, as amended.

THOMAS B. HART,

LOUIS LOSS,

ALEXANDER J. BROWN, Jr.,

ROBERT J. SUGRUE,

*Attorneys for the Securities and Exchange Commission,
105 West Adams Street,
Chicago, Illinois.*

GEORGE L. ROBERTSON,

United States Attorney,

402 New Federal Building, St. Louis, Missouri.

Local counsel for the purpose of service of notices in the above entitled cause.

STATE OF ILLINOIS,

County of Cook, ss:

Robert J. Sugrue, being duly sworn, deposes and says that he is an attorney for the Securities and Exchange Commission, plaintiff in the foregoing action, that he has read the complaint and that to the best of his knowledge, information and belief there is good ground to support the allegations therein.

ROBERT J. SUGRUE.

Subscribed and sworn to before me this 23d day of October 1951.

Notary Public.

My commission expires

[CAPTION]

Preliminary injunction

It appearing to the satisfaction of the Court on the verified complaint and supporting affidavit filed herein that the plain-

tiff is entitled to an order restraining the defendant from selling securities in violation of Section 5 (a) of the Securities Act of 1933, as amended (15 U. S. C. 77e (a)); and

It further appearing that the defendant, in the sale of its \$25.00 par value common stock to its employees pursuant to a resolution of its board of directors adopted on September 11, 1951, will unless restrained by order of this Court, make use of means or instruments of transportation of communication in interstate commerce, or of the mails, in violation of Section 5 (a) of the Securities Act of 1933; and

It further appearing that the defendant will, unless restrained by order of this Court, carry said securities or cause them to be carried through the mails or in interstate commerce by means or instruments of transportation for the purpose of said sale, or for delivery after said sale, in violation of Section 5 (a) of said Act; and

It further appearing that the defendant has waived notice of hearing and service of summons and has consented to the entry of a preliminary injunction herein; saving to defendant all rights to contest the issue on final hearing and waiving no rights in that respect;

It is hereby ordered that, pending hearing and a determination of plaintiff's demand for final judgment, the defendant, its agents, servants, employees, attorneys and assigns, and each of them, be and they are hereby enjoined from, directly or indirectly:

(1) Making use of any means or instruments of transportation or communication in interstate commerce, or of the mails, to sell \$25.00 par value common stock of Ralston Purina Company, or any other securities, to its employees, through the use or medium of any prospectus, or otherwise;

(2) Carrying such securities or causing them to be carried through the mails or in interstate commerce by any means or instruments of transportation for the purpose of sale or delivery after sale to its employees;

unless and until a registration statement is in effect with the Securities and Exchange Commission as to such securities.

(S) RUBEY M. HULEN,

District Judge.

Entered October 24, 1951.

[CAPTION]

Answer

Defendant answering the Complaint herein states:

1. Denies that defendant is engaged or is about to engage in acts and practices which constituted or will constitute violations of Section 5 (a) of the Securities Act of 1933 as alleged in paragraph 1 of the Complaint.

2. Admits that this action arises under Section 22 (a) of the Securities Act of 1933 as alleged in paragraph 2 of the Complaint.

3. Answering paragraph 3 of the Complaint, defendant denies that since on or about October 1, 1947, defendant has been or is now offering for sale or selling securities, namely \$25 par value common stock of Ralston Purina Company, except this defendant states that it has been offering for sale and selling such stock but only to the extent, under the circumstances and in the manner hereinafter set forth. Further answering paragraph 3, defendant states that in September or October of the calendar years 1947, 1948, 1949, and 1950 defendant offered for sale and sold to a limited number of selected key employees, who had been advised that Ralston Purina Company authorized but unissued common stock would be made available by the Company for purchase by them, and who requested the sale of such stock to them by defendant, and that pursuant to such request said common stock was sold to such key employees, and that certain of such offers for sale or sales to such employees were made by use of the mails and otherwise in interstate commerce.

4. Admits the allegations of paragraph 4 of the Complaint.

5. Further answering, defendant states that it has a nationwide distribution of its products and that to facilitate such distribution operates a large number of mills, cereal plants, soybean processing plants, sanitation and farm supply distribution centers, warehouses, sales offices and stores all over the United States; that it has a large number of various departments and that the operation of its business is, so far as possible, decentralized so that the various operating units throughout the country have the responsibility for the conduct of their individual operation and that defendant has in the past five years very substantially increased the number and size of its plants of various types and the dollar volume of its business.

6. That for almost fifty years past, defendant has pursued the policy of selecting its employees for promotion from within its own organization and to that end has made every effort to

develop the capacities and potentialities of such employees and to hold out incentives to such employees for the purpose of stimulating and maintaining their interest and effectiveness in the successful operation of the company's various plants and facilities.

7. That for at least a quarter of a century in pursuance of the policies just hereinabove mentioned, defendant has from time to time made stock available for purchase by its key employees in order to effectively carry out its program as above outlined; that in selecting such employees to whom such stock would be made available, various executive officers of the company have from time to time conferred with the top men in the various branches of all kinds mentioned above for the purpose of carefully selecting persons in order to make such stock available in comparatively limited quantities to employees who had special capacities and special responsibilities to the end that such employees would become stockholders of the company or might purchase additional stock therein and that it has never at any time either made any general offering or made stock available to all employees, but limited it strictly in the manner hereinabove set forth; that the company was at all said times unwilling to sell or offer to sell the company's stock at the prices fixed from time to time to any person, firm or corporation other than such carefully selected employees, and was not willing and has not sold or offered to sell said stock to any persons other than such selected employees.

8. That defendant believes that it is for the best interests of the company that its key employees be owners of common stock of the company; that such ownership stimulates and rewards their efforts to increase the prosperity of the company, makes them more valuable employees, creates increased efficiency, develops potential executives and makes it less likely that they will leave the employ of the company to accept positions with its competitors.

9. That defendant in the years 1947, 1948, 1949, 1950, and 1951 paid substantial cash bonuses to its employees at the end of its fiscal year in September of each year and that such bonuses were paid principally to those certain key employees to whom such stock was offered and that many of such employees were, in each of such years when they received such bonuses, anxious to acquire additional common stock of the company; that the company's common stock was and is not listed on any stock exchange, but on the contrary, is dealt in only in the over-the-counter market and in limited quantities. That the supply of the company's common stock available for purchase in said market in September and October of each of the years

1947 to 1951 inclusive was entirely insufficient to satisfy the reasonably anticipated demands of the company's employees to purchase such common stock of the company without thereby causing, by the competitive bidding of such employees, an artificial and unjustified increase in the market price of such stock unless stock in the company was made available for purchase by them without competitive bidding and therefore thereby artificially running up the price of such stock.

10. That in September and October of 1951 the company had 6,850 employees and that less than 500 of its employees were advised that such stock might be made available for purchase by them. That at said time, a notice which was the same or substantially the same as that just hereinafter set out, was given to every branch manager, every sales manager and every store manager where any key employees had evidenced any interest in purchasing stock of defendant company and that, through such managers and orally and in other ways, substantially all employees who had indicated any interest in purchasing such stock were advised of said notice. Said notice read as follows:

"The Company is unwilling to take the responsibility, in essence, of guaranteeing or forecasting that the price of Purina stock is going up or will remain at its present price for the next twelve months or so. Consequently the Company is making no recommendation that employees purchase at current prices.

"The Company, however, is willing to try to protect employees against a market rise in the price of the stock resulting from temporary competitive bidding by employees. To do this the Company will make available for a limited time some authorized but unissued stock at \$80 a share. The only employees to whom this stock will be available will be those who take the initiative and are interested in buying stock at present market prices.

"If stock can be purchased on the open market at a price lower than \$80 a share, the employee will of course buy at the lower price."

(Discussed at 9/14/51 Executive Committee meeting at which time all officers present were given a copy of this memo. Copy sent to other officers.)

That 165 of such key employees did request an opportunity to purchase stock by them in varying amounts ranging from a minimum of one share to a maximum of two hundred shares, the total amount of such shares so being requested being about 3,500.

11. That defendant company since 1945 has printed and published an annual statement fully reflecting the company's

financial position and earnings; that copies of such financial statement were furnished to many banks, brokerage and investment houses, and were filed with the Securities and Exchange Commission and the New York Stock Exchange, where the preferred stock is listed, and was in general easily available. That by reason of stock having been made available to its key employees in 1947 and for more than twenty years prior thereto a great majority of its key employees are stockholders of the company; and that as regards the year 1951, approximately 75% of the persons to whom stock was made available and approximately 75% of those who applied to be allowed to purchase stock were stockholders of the company and had duly received the company's annual statements; that during the long period of years during which such stock has been offered to such key employees and purchased by them there has never been any complaint from any such purchaser in connection with his purchase of said stock.

12. That at or about the time that the selected key employees were advised of the availability of such stock in September or October 1951, the plaintiff objected to the defendant's proceeding with the sale of such stock to its employees on the alleged ground that such offer would constitute a public offering of the stock and therefore would require registration under Section 5 (a) of the Securities Act of 1933; and that defendant immediately advised plaintiff that it was and is now of the opinion that such offer for sale to such key employees in the manner and under the circumstances and conditions hereinabove set forth would not constitute a public offering within the meaning of Section 5 (a) of the Securities Act, but no sales were or have been consummated pending a determination of the right of this defendant to sell such stock to such key employees under the circumstances and in the manner hereinabove set forth.

13. And this defendant denies that the sale of said approximately 3,500 shares to said 163 key employees does or will constitute any public offering within the meaning and intent of Section 5 (a) of the Securities Act and therefore asks to be discharged with its costs.

1630 Boatmen's Bank Building,
St. Louis 2, Missouri,
Attorneys for Defendant.

BRYAN, CAVE, MCPHEETERS & McROBERTS,
Of Counsel.

[CAPTION]

Pretrial conference order

Date: November 27, 1951.

Before: Honorable Rubey M. Hulen, Judge.

At: St. Louis, Missouri (in chambers).

Appearances: For Plaintiff, Robert J. Sugrue, 105 West Adams Street, Chicago, Illinois. For Defendant, Thomas M. McPheeters, of Bryan, Cave, McPheeters & McRoberts, Boatmen's Bank Bldg., St. Louis, Missouri.

Stipulation

It is hereby stipulated and agreed:

1) That defendant will furnish to the reporter immediately a copy of the resolution of September 11, 1951, authorizing the sale of 10,000 shares of stock in the defendant company, as per its terms; that said resolution may be treated by either of the parties to this case as an original and used in the trial of the case, subject to objections as to materiality, without further identification.

2) Defendant admits use of the mails in offering 10,000 shares of stock above referred to (1), for the year 1951.

3) Defendant admits as to the 10,000 shares of stock referred to in paragraph (1), that same, in parts thereof, were offered to between 400 and 500 employees of the defendant company.

4) Defendant will prepare and supply to the reporter, on or before November 30, 1951, a typewritten tabulation showing the salary range of the employees purchasing stock of defendant for the years 1948, 1949, and 1950, and the salary range of those employees who have offered to purchase stock during the year 1951, and said tabulation will be subject to use by either party to this cause, to show the facts set forth, in place of original records; subject to correction, should any error be found, and subject only to objection as to materiality if offered at the trial, or in any other proceeding in this case.

5) In connection with the offering of stock by the defendant to employees, as to employees other than those whose names appear in the list of 165 names which has heretofore been given to the plaintiff by the defendant, the defendant represents and admits that it is unable to give a further complete list, for the reason that offering of stock to other employees was made orally and no record of the offering was kept.

6) Defendant represents and admits that it made offerings of stock to employees who did not purchase during the years

1948, 1949, and 1950, but defendant is unable to give the names of the employees to whom such stock offering was made and who did not make purchases, because no record of the offering as to such was kept by the defendant.

7) Attached to this pretrial memorandum is Exhibit A, as indicative and showing the number of shares of stock that were sold in the over-the-counter market during the years 1946 to 1951, inclusive, as evidenced by the transfer books which are kept by the defendant company; in connection with which it is stipulated, that the table shown in said exhibit is a fair illustration of the number of such sales, based on the assumption resulting from the revenue stamps attached to the certificates when offered for transfer, which defendant represents were in the required amount as in the case of a sale, with the note appearing on the exhibit included in such explanation; the month of September for the years shown being illustrative of the number of transfers representing ultimate sales, to wit:

	Shares
For the month of September 1947, sold to ultimate purchasers.....	737
For the month of September 1948, sold to ultimate purchasers.....	199
For the month of September 1949, sold to ultimate purchasers.....	267
For the month of September 1950, sold to ultimate purchasers.....	712
and	
For the month of September 1951, sold to ultimate purchasers.....	932

that the figures for the month of September, for the years 1947 to 1951, inclusive, as above set forth, are fairly representative of percentage of ultimate sales compared to transfers for the remainder of the months, for the years shown on said exhibit; all as evidenced by the transfer records of the defendant; that said Exhibit A may be used for the purpose of evidencing the facts above set forth by either of the parties hereto, without the production of further books and records of the company, subject to objection as to relevancy only.

8) There are attached hereto Exhibits B, C, D, E, and F; Exhibit B is a list of employees of the defendant who purchased stock of the company as of October 1, 1947, in the amounts shown on said list; Exhibit C being a similar list for the year 1948; Exhibit D being a similar list for the year 1949; Exhibit E being a similar list for the year 1950; and Exhibit F being a list of employees of the defendant company who have requested an opportunity to purchase stock in defendant company in September or October 1951; it is stipulated by the parties that said list and the information shown thereon may be used by either of the parties hereto, without further production of original records of identification, subject only to objections as to relevancy.

9) There are attached hereto Exhibits G, H, I, and J, showing sales and the reasons for sales of stock by employees of the defendant, to wit:

Exhibit G shows sales of stock purchased by employees in the year 1947 and sold by such purchasers in the year 1947 or subsequent thereto;

Exhibit H shows no sales of stock in the year 1948 or thereafter by employees who purchased stock in 1948;

Exhibit I shows sales of stock purchased by employees during 1949 and sold by such purchasers in the year 1949 or thereafter;

Exhibit J shows purchases of stock during the year 1950 and sales to date of such stock by such purchasers;

that said Exhibits G to J, inclusive, may be used by either of the parties hereto, without the production of further records or identification, subject to objection as to materiality.

10) That wherever the term "employee" or "employees" is used in this stipulation, defendant uses the term as referring to a character of employee of defendant that defendant designates as a key employee, and defendant may, at the trial of this case, offer testimony as to the meaning of "key employee", and subject to objection as to relevancy.

11) By agreement of counsel, this cause is reset for ten o'clock, Friday, December 28, 1951.

12) Copy of resolution referred to in paragraph 1) is hereto attached, as exhibit K, which resolution defendant admits was adopted on September 11, 1951, by its Board of Directors.

Certificate

I, Floyd A. Buchanan, do hereby certify that the preceding pages 1 through 6 are the pretrial order under Rule 16, F. R. C. P., made on November 27, 1951, in the cause as entitled and numbered on page 1 hereof.

Copies supplied to counsel for both parties.

Approved:

FLOYD A. BUCHANAN,
Official Court Reporter.

Judge.

PRETRIAL CONFERENCE EXHIBIT A

Number of shares sold in over-the-counter market

	1947	1948	1949	1950	1951
January	1,797	2,165	2,165	5,104	3,012
February	845	1,444	1,279	2,949	1,007
March	1,187	753	1,588	383	40,367
April	1,729	771	1,256	1,152	24,843
May	1,487	770	2,425	1,040	5,477
June	1,698	1,573	1,566	1,388	2,812
July	2,713	1,926	676	1,163	3,629
August	1,741	294	1,433	769	2,162
September	1,687	277	508	2,162	6,664
October	1,552	819	1,253	1,923	
November	521	2,385	575	1,523	
December	1,299	1,648	4,627	4,414	
Total	18,348	15,124	19,341	24,110	

NOTE.—In March 1951, the Woods Family sold 24,000 shares to a syndicate headed by Merrill Lynch Pierce Fenner & Bean, and the figures for March, April and May, show the effect of this purchase and the resale thereof by the syndicate members to their customers.

PRETRIAL CONFERENCE EXHIBIT B

List of key employees of Ralston Purina Company who purchased common stock of the Company at \$47.50 per share as of Oct. 1, 1947

Number of names	243
Number who were previously stockholders (77%)	187
Number of shares	6,984

Name of employee	Title or payroll classification	Location of employee (by plant, division or sales office)	Number of shares purchased	Stockholders (self or immediate family) at time of purchase (x)
ADVERTISING				
W. D. Bowte	Copywriter	St. Louis, Mo.	30	x
W. D. Brockman	Asst. Mgr., Feeder Finance Div.	St. Louis, Mo.	5	x
C. C. Fawcett	Mgr., Ad. Dept.	St. Louis, Mo.	10	x
W. P. Hays	Asst. Director of Advertising	St. Louis, Mo.	100	x
E. W. Kosfeld	Mgr., Dealer Advertising	St. Louis, Mo.	12	x
John McGinty	Mgr., Publications	St. Louis, Mo.	25	x
G. M. Philpott	Vice Pres. (Promotion)	St. Louis, Mo.	100	x
W. J. Riley	Supervising Copywriter	St. Louis, Mo.	30	x
BUYING				
V. B. Brannon	Asst. Mgr., Mill Supply	St. Louis, Mo.	10	x
John P. Brown	Asst. Mgr., Soybean Div.	St. Louis, Mo.	25	x
E. A. Gayce	Vice Pres. (Buying)	St. Louis, Mo.	75	x
R. B. Dean	Mgr., Grain Buying Div.	St. Louis, Mo.	30	x
W. E. DeKey	Mgr., Mill Supply	St. Louis, Mo.	36	x
L. M. Kishlar	Mgr., Special Products Div.	St. Louis, Mo.	75	x
P. C. Knowlton	Gen. Mgr., Checkerboard Elev. Co.	St. Louis, Mo.	50	x
W. A. Krause	Mgr., Pricing Div.	St. Louis, Mo.	25	x
W. C. Krieger	Purchasing Agent	St. Louis, Mo.	25	x
L. W. Lindhoffer	Gen. Purchasing Agent	St. Louis, Mo.	120	x
Grafton Lethrop	Mgr., Chow Depts.	St. Louis, Mo.	75	x
James W. Mathers	Int. Grain Merchandising Mgr.	Buffalo, N. Y.	10	x
John O'Connor	Asst. in Soybean Div.	St. Louis, Mo.	10	x
T. G. Stephenson	Mgr., Checkerboard Elev. Co.	St. Louis, Mo.	25	x

List of key employees of Ralston Purina Company who purchased common stock of the Company at \$47.50 per share as of Oct. 1, 1947—Continued

Name of employee	Title or payroll classification	Location of employee (by plant, division, or sales office)	Number of shares purchased	Stock-holders (self or immediate family) at time of purchase (x)
CEREAL				
Elspeth Bennett	Mgr., Nutrition Service	St. Louis, Mo.	5	
R. Z. Chew	Mgr., Private Label Div.	Chicago, Ill.	25	
M. G. Crider	Business Mgr.	St. Louis, Mo.	25	x
J. B. Dallas	District Sales Mgr.	San Francisco, Calif.	45	x
Herbert DeBoer	Cereal Sales Mgr.	Seattle, Wash.	20	x
G. R. Dougherty	Cereal Sales Mgr.	Atlanta, Ga.	25	x
J. V. Getlin	Mgr., Cereal Promotion	St. Louis, Mo.	30	x
D. S. Hegmann	District Mgr. Sales	Syracuse, N. Y.	40	x
R. L. Henry	District Mgr. Sales	Memphis, Tenn.	5	
J. B. Jekle	District Mgr. Sales	Boston, Mass.	25	x
W. W. Knorr	Special Institutional Salesman	Philadelphia, Pa.	10	
W. E. Konrad	Retail Salesman	San Francisco, Calif.	10	x
A. J. Martin	District Sales Mgr.	New York, N. Y.	25	x
L. G. McCray	District Sales Mgr.	Philadelphia, Pa.	25	x
H. J. Middleton	Asst. to Business Mgr.	St. Louis, Mo.	10	
R. C. Morgan	District Sales Mgr.	Cleveland, Ohio	40	x
A. O. Robertson	District Sales Mgr.	Fort Worth, Tex.	30	x
R. E. Smith	Vice Pres. (Cereals)	St. Louis, Mo.	74	x
F. L. Weber	Mgr., Institutional Div.	St. Louis, Mo.	50	x
EXECUTIVE SPECIAL				
T. R. Ror	Asst. to Chairman of Board	St. Louis, Mo.	10	x
FINANCIAL				
Earl Alexander	Asst. Mgr., Acctg. Div.	St. Louis, Mo.	10	x
C. M. Bacon	Mgr., Budget Div.	St. Louis, Mo.	20	x
P. C. Baichly	Asst. Gen. Credit Mgr.	St. Louis, Mo.	40	x
Alma Campbell	Mgr., Gen. Order Div.	St. Louis, Mo.	10	x
S. M. Cole	Mgr., Cereal Order Credit	St. Louis, Mo.	20	x
Mildred Deppe	Secy. to Controller	St. Louis, Mo.	10	x
G. L. Doerbaum	Credit Manager	St. Louis, Mo.	20	x
Correll Fox	Mgr., Contract Div., Legal Dept.	St. Louis, Mo.	13	
V. W. Gieselman	Mgr., Insurance Dept.	St. Louis, Mo.	16	x
E. D. Godfrey	Mgr., Accounting Div.	St. Louis, Mo.	50	x
P. L. Jacoby	Controller	St. Louis, Mo.	36	x
R. A. Jekyl	Mgr., Gen. Order-Credit Dept.	St. Louis, Mo.	20	x
F. A. Judell	Counsel	St. Louis, Mo.	10	x
E. B. Murdoch	Mgr., Tax and Corporate Dept.	St. Louis, Mo.	38	x
E. B. Perkins	Cashier	St. Louis, Mo.	10	x
Harry Pickler	Mgr., Sales Payroll Div.	St. Louis, Mo.	5	x
E. R. Siler	Treasurer	St. Louis, Mo.	100	x
A. M. Stevens	Mgr., Feeder Finance	St. Louis, Mo.	10	x
Lewis B. Stuart	Vice Pres. (Finance)	St. Louis, Mo.	50	x
PERSONNEL				
Naomi D. Burton	Mgr., Clerical Service	St. Louis, Mo.	10	x
E. M. DeVaux	Asst. General Office Mgr.	St. Louis, Mo.	10	x
A. S. Hemphill	Asst. to Personnel Director	St. Louis, Mo.	10	x
F. W. Huntington	Vice Pres. (Personnel and Office)	St. Louis, Mo.	100	x
A. W. Meise	Personnel Director	St. Louis, Mo.	10	x
I. O. Royse	General Office Mgr.	St. Louis, Mo.	22	x
J. E. Schoplin	Mgr., Ad-Service Div.	St. Louis, Mo.	2	x
PUBLIC RELATIONS				
O. O. McIntosh	Director, Public Relations	St. Louis, Mo.	20	x
E. A. Sinden	Director, Public Relations	St. Louis, Mo.	30	x
J. A. Sykes	Vice Pres. (Public Relations)	St. Louis, Mo.	100	x

List of key employees of Ralston Purina Company who purchased common stock of the Company at \$47.50 per share as of Oct. 1, 1947—Continued

Name of employee	Title or payroll classification	Location of employee (by plant, division, or sales office)	Number of shares purchased	Stockholders (self or immediate family) at time of purchase (x)
PRODUCTION				
St. Louis Office, Laboratories, and Research Farms				
T. R. Atchison	Gen. Traffic Mgr.	St. Louis, Mo.	80	x
C. D. Bartley	Utilities Div. Supervisor	St. Louis, Mo.	10	x
V. A. Bergmann	Mgr., Sanitation and Merchandising	St. Louis, Mo.	25	x
W. B. Brew	Mgr. Organic Laboratory	St. Louis, Mo.	10	x
J. W. Brooks	Asst. in Animal Pathological Dept.	St. Louis, Mo.	2	
H. H. Brower	Asst. Mgr., Sanitation Products Dept.	St. Louis, Mo.	10	
J. K. Brown	Asst. to Vice President	St. Louis, Mo.	8	x
R. E. Gray	Mgr., Egg Marketing Div.	St. Louis, Mo.	15	
C. W. Darby	Asst. in Animal Pathological Dept.	St. Louis, Mo.	10	x
D. K. English	Mgr., Engineering Dept.	St. Louis, Mo.	66	x
C. D. Fales	Sales Asst. in Eastern Region	St. Louis, Mo.	10	
K. E. Garrison	Mgr., Cereal and Sanitation Plants	St. Louis, Mo.	65	x
C. A. Gettler	Staff Engineer	St. Louis, Mo.	20	x
D. L. Grant	Division Production Mgr.	St. Louis, Mo.	106	x
Florence Grasel	Secy. to Production Mgr.	St. Louis, Mo.	10	x
Mary Ione Headrick	Secy. to Production Mgr.	St. Louis, Mo.	5	
H. T. James	Staff Engineer	St. Louis, Mo.	20	
C. S. Johnson	Vice President (Research and Products)	St. Louis, Mo.	100	x
E. B. Johnson	Asst. Mgr., Product Control	St. Louis, Mo.	25	
J. F. Jones	Div. Production Mgr.	St. Louis, Mo.	10	x
D. C. Joy	Asst. Mgr., Checkerboard Stores	St. Louis, Mo.	20	x
L. H. Kronig	Mgr., Checkerboard Stores	St. Louis, Mo.	30	x
R. E. Lubbehusen	Mgr., Animal Pathological Div.	St. Louis, Mo.	10	x
N. J. Martin	Staff Engineer	St. Louis, Mo.	16	x
W. O. Maurer	Staff Engineer	St. Louis, Mo.	21	x
Helen Miller	Secy. to Sales Manager	St. Louis, Mo.	10	x
G. A. Noxon	Mgr., Production Dept.	St. Louis, Mo.	50	x
A. J. O'Brien	Personnel Mgr., Production Dept.	St. Louis, Mo.	5	
H. L. Olyncie	Mgr., Farm Supply Warehouse	St. Louis, Mo.	5	x
Harm D. Pefery	Mill Feed Div. Mgr., Checkerboard Elevator Company	St. Louis, Mo.	10	
Mary Jane Pickel	Secy. to Vice President	St. Louis, Mo.	2	x
G. C. Pittenger	Asst. Mgr., Farm Supplies Dept.	St. Louis, Mo.	10	x
T. J. Potts	Mgr., Analytical Laboratory	St. Louis, Mo.	7	x
R. E. Rowland	Vice Pres. (Production)	St. Louis, Mo.	100	x
H. C. Shaefer	Mgr., Nutrition Research Labs.	St. Louis, Mo.	16	x
W. C. Schofield	Assistant in Animal Pathological Dept.	St. Louis, Mo.	8	
G. A. Schaub	Western Traffic Mgr.	St. Louis, Mo.	10	x
F. D. Smith	Mgr., Livestock Sales, Eastern Region	St. Louis, Mo.	30	x
G. H. Steel	Safety Director	St. Louis, Mo.	15	x
J. C. Thompson	Mgr., Dairy Div. of Chow Products	St. Louis, Mo.	10	x
Mildred Umbrath	Secy. to Vice President	St. Louis, Mo.	10	
L. D. Varble	Office Mgr., St. Louis Plant	St. Louis, Mo.	18	x
D. E. Ward	Mgr., Sanitation Dept.	St. Louis, Mo.	50	x
John M. Wear, Jr.	Mgr., Experimental Farm	Gray Summit, Mo.	11	x
Claude L. Welch, Mgr.	Product Control	St. Louis, Mo.	40	x
Harold L. Wilke, Mgr.	Gen. Poultry and Hatching Dept.	St. Louis, Mo.	10	
Virgil O. Wodicka, Mgr.	Cereal Research Lab.	St. Louis, Mo.	10	x
John R. Wright	Staff Engineer	St. Louis, Mo.	5	

List of key employees of Ralston Purina Company who purchased common stock of the Company at \$47.50 per share as of Oct. 1, 1947—Continued

Name of employee	Title or payroll classification	Location of employee (by plant, division, or sales office)	Number of shares purchased	Stock- holders (self or immediate family) at time of purchase (X)
PRODUCTION—Con.				
CENTRAL PLANTS				
Fort Worth, Tex.				
E. E. Braznell	Superintendent	Ft. Worth, Tex.	10	X
R. E. Cowan	Manager	Ft. Worth, Tex.	100	X
L. A. Pharr	Asst. Manager	Ft. Worth, Tex.	40	X
Iowa Falls, Iowa				
H. N. Johnson	Manager	Iowa Falls, Iowa	20	X
Arno Tagge	Asst. Manager	Iowa Falls, Iowa	4	
Kansas City, Mo.				
J. C. Skaggs	Manager	Kansas City, Mo.	60	X
Lubbock, Tex.				
John Joseph Moore	Superintendent	Lubbock, Tex.	17	
Minneapolis, Minn.				
Oscar F. Clayton	Check-R-Board Elev. Mgr.	Minneapolis, Minn.	40	
R. L. Ranney	Superintendent	Minneapolis, Minn.	20	X
A. C. Weberg	Manager	Minneapolis, Minn.	20	X
Omaha, Nebr.				
Dewey Agnew	Superintendent	Omaha, Nebr.	8	X
Warren Wells	Manager	do	21	X
St. Louis, Mo.				
Charles E. Beyer	Traffic manager, Checker- board Elev. Co.	St. Louis, Mo.	10	X
H. L. Colwell	Manager, St. Louis Plant	do	75	X
Raleigh B. Wilson	Intermediate Grain Merchant, Checkerboard Elev. Co.	do	3	
EASTERN PLANTS				
Buffalo, N. Y.				
James Hedrick	Superintendent	Buffalo, N. Y.	50	X
Joseph F. Leping	Manager	do	20	X
N. B. Morey	Asst. Manager	do	50	X
Charlotte, N. C.				
Gilbert Branch	Acting Manager	Charlotte, N. C.	20	X
Oliver W. Klein	Superintendent	do	10	
Circleville, Ohio				
Jay L. Clark	Superintendent	Circleville, Ohio	20	X
Vaden Couch	Manager	do	30	
Nashville, Tenn.				
Joda Austin	Superintendent	Nashville, Tenn.	50	X
J. S. Blunt	Manager	do	100	X
W. A. Gunn	Asst. Manager	do	20	X
Richmond, Ind.				
V. H. Frisch	Manager	Richmond, Ind.	10	

List of key employees of Ralston Purina Company who purchased common stock of the Company at \$47.50 per share as of Oct. 1, 1947—Continued

Name of employee	Title or payroll classification	Location of employee (by plant, division, or sales office)	Number of shares pur- chased	Stock- holders (self or immediate family) at time of purchase (x)
PRODUCTION—CON.				
EASTERN PLANTS—CON.				
<i>Wilmington, Del.</i>				
A. L. Fager	Asst. Manager	Wilmington, Del.	21	
Dewey Reader	Manager	Wilmington, Del.	20	x
WESTERN PLANTS				
<i>Denver, Colo.</i>				
W. T. Chafee	Manager	Denver, Colo.	5	
Otis P. Sherrill	Asst. Mgr.-Buyer	Denver, Colo.	20	
<i>Los Angeles, Calif.</i>				
J. P. Andrews	Manager	Los Angeles, Calif.	20	
F. E. Boss	Buyer	Los Angeles, Calif.	10	x
<i>Oakland, Calif.</i>				
W. R. Arends	Manager	Oakland, Calif.		x
Lyle Herlitz	Elevator Foreman	Oakland, Calif.		
Edwin Murray	Superintendent	Oakland, Calif.	21	x
<i>Pocatello, Idaho</i>				
H. F. Ory	Manager	Pocatello, Idaho	12	x
<i>Visalia, Calif.</i>				
M. E. Staed	Superintendent	Visalia, Calif.	10	x
CEREAL AND SANITA- TION PLANTS				
<i>Battle Creek, Mich.</i>				
Joseph Berger	Power Engineer	Battle Creek, Mich.	9	
<i>Davenport, Iowa</i>				
John M. Burrows	Manager	Davenport, Iowa	40	x
<i>Minneapolis, Minn. (Py-Krisp)</i>				
Henry Radde	Office Manager	Minneapolis, Minn.	4	x
SANITATION PLANT				
Gay Nelson	Manager	St. Louis, Mo.	7	
SALES				
ST. LOUIS GENERAL STAFF				
Roy Brandenburg	Mgr., Farm Supply (Stores)	St. Louis, Mo.	50	x
Beryl Campbell	Asst. to Gen. Sales Mgr.	St. Louis, Mo.	14	x
J. E. Hinshaw	Mgr., Poultry Sales, Southern Region	St. Louis, Mo.	23	x
John E. Hoff	Mgr., Poultry Sales, Grain Belt Div.	St. Louis, Mo.	30	x
Juanita A. Hohnstrater	Steno. to Staff Mgr.	St. Louis, Mo.	7	
R. V. Kirk	Sales Mgr., Central States	St. Louis, Mo.	25	x
Carl A. Leupold	Mdse. Mgr., Southern Region	St. Louis, Mo.	40	x
Mack O. North	Mgr., Broiler, Turkey, and Luck Div. of Poultry Dept.	St. Louis, Mo.	20	
E. B. Pratt	Dairy Chow Mgr.—Grain Belt	St. Louis, Mo.	20	x

List of key employees of Ralston Purina Company who purchased common stock of the Company at \$47.50 per share as of Oct. 1, 1947—Continued

Name of employee	Title or payroll classification	Location of employee (by plant, division, or sales office)	Number of shares pur- chased	Stock- holders (self or immediate family) at time of purchase (x)
SALES—CON.				
ST. LOUIS GENERAL STAFF—CON.				
J. Roe Pree	Asst. in St. Louis Farm Supply.	St. Louis, Mo.	10	x
E. M. Putney	Vice Pres. (Gen. Chow Sales Mgr.)	St. Louis, Mo.	100	x
Meade Summers	Mgr. Poultry Sales—Eastern Region.	St. Louis, Mo.	50	x
E. M. Williams	Mgr. Cattle, Hog, and Sheep Sales, Grain Belt Region.	St. Louis, Mo.	42	x
GRAIN BELT—WESTERN REGION				
<i>Central States Division</i>				
R. D. McGranahan	District Salesman	St. Louis, Mo.	20	x
Leonard G. Ray	District Salesman	St. Louis, Mo.	25	x
Fred W. Schuler	District Salesman	St. Louis, Mo.	20	x
<i>Missouri-Iowa Division</i>				
L. W. Karr	Salesmanager	Des Moines, Iowa	70	x
<i>North Central Division</i>				
Fred B. Merrill	Salesmanager	Minneapolis, Minn.	25	x
<i>Western States Division</i>				
Gil L. James	Salesmanager	Kansas City, Mo.	94	x
SOUTHERN REGION				
<i>Nashville Division</i>				
G. S. Crowe	District Salesman	Nashville, Tenn.	10	x
Ira L. Fears	District Salesman	Nashville, Tenn.	10	x
J. W. Freeman	District Salesman	Nashville, Tenn.	50	x
Ralph H. Jarrett	District Salesman	Nashville, Tenn.	50	x
J. E. Streetman	Salesmanager	Nashville, Tenn.	40	x
J. Howard Watson	District Salesman	Nashville, Tenn.	25	x
<i>South Atlantic Division</i>				
Horace G. Bolton	District Salesman	Charlotte, N. C.	10	x
Hollis B. Franks	District Salesman	Charlotte, N. C.	50	x
Bernard A. Mangum	District Salesman	Charlotte, N. C.	20	x
J. V. McAllister	District Salesman	Charlotte, N. C.	1	x
R. P. Oliver	Salesmanager	Charlotte, N. C.	100	x
<i>South Central Division</i>				
J. H. Branch	Salesmanager	Memphis, Tenn.	20	x
C. M. Close	District Salesman	Memphis, Tenn.	75	x
R. J. Middleton	District Salesman	Memphis, Tenn.	25	x
W. J. Newson	District Salesman	Memphis, Tenn.	40	x
Ruford H. Roberts	District Salesman	Memphis, Tenn.	25	x
T. E. Veitch	District Salesman	Memphis, Tenn.	40	x
<i>Southeastern Division</i>				
C. F. Holle	District Salesman	Jacksonville, Fla.	100	x
H. M. Nonnenmacher	District Salesman	Jacksonville, Fla.	25	x
Tom B. Preston	District Salesman	Jacksonville, Fla.	25	x
Fred H. Pruitt	District Salesman	Jacksonville, Fla.	3	x
Wendell E. Sherrel	District Salesman	Jacksonville, Fla.	25	x

List of key employees of Ralston Purina Company who purchased common stock of the Company at \$47.50 per share as of Oct. 1, 1947—Continued

Name of employee	Title or payroll classification	Location of employee (by plant, division, or sales office)	Number of shares pur- chased	Stock- holders (self or immediate family) at time of purchase (x)
SALES—Con.				
EASTERN REGION				
<i>Central Atlantic Division</i>				
Lee B. Agee	District Salesman	Baltimore, Md.	20	x
Clyde M. Appar	Territory Salesman	Baltimore, Md.	5	
Olin M. Avis	Territory Salesman	Baltimore, Md.	15	x
Charles J. Bryan	District Salesman	Baltimore, Md.	100	x
Louis A. Clements	District Salesman	Baltimore, Md.	10	x
Jacob A. Correll	District Salesman	Baltimore, Md.	40	x
J. D. Davis III	Territory Salesman	Baltimore, Md.	15	x
Mario DeAntonellis	Territory Salesman	Baltimore, Md.	10	x
Clifford M. Dryden	Territory Salesman	Baltimore, Md.	30	x
Harry H. Dukes	Territory Salesman	Baltimore, Md.	60	x
Charles E. Ficke	District Salesman	Baltimore, Md.	15	x
Joseph D. Fowler	Territory Salesman	Baltimore, Md.	10	x
Gibson Graham	Territory Salesman	Baltimore, Md.	20	x
Jesse J. Gwaltney	Territory Salesman	Baltimore, Md.	15	x
Calvin A. Hauck	District Salesman	Baltimore, Md.	25	x
James W. Honeysett	District Salesman	Baltimore, Md.	20	x
Robert S. Keith	District Salesman	Baltimore, Md.	20	x
Philip H. Sprengle	District Salesman	Baltimore, Md.	25	x
W. Franklin Sumner	District Salesman	Baltimore, Md.	10	x
Wade P. Thomas	District Salesman	Baltimore, Md.	15	x
H. Clay Weaver	District Salesman	Baltimore, Md.	10	x
Sterling White	Salesmanager	Baltimore, Md.	80	x
Fitzhugh L. Wickham	District Salesman	Baltimore, Md.	20	x
Arthur E. Williams	Territory Salesman	Baltimore, Md.	10	x
A. Shober Zarbe	District Salesman	Baltimore, Md.	30	x
<i>Lake States Division</i>				
Cary T. Hartman	District Salesman	Columbus, Ohio	20	x
Leon M. McCorkle	District Salesman	Columbus, Ohio	20	x
V. W. Peterson	District Salesman	Columbus, Ohio	20	x
J. H. Ralston	Salesmanager	Columbus, Ohio	50	x
J. T. Weaver	District Salesman	Columbus, Ohio	10	
<i>North Atlantic Division</i>				
L. L. Braybrook	Salesmanager	Syracuse, N. Y.	100	x
Harold I. Fiedrick	District Salesman	Syracuse, N. Y.	15	x
Duncan R. Rodgers	District Salesman	Syracuse, N. Y.	15	
John B. Johnson	District Salesman	Syracuse, N. Y.	5	x
Warren H. Searfoss	District Salesman	Syracuse, N. Y.	10	x
STORES				
George A. Allen	Supervisor of Florida Stores	St. Louis, Mo.	25	x
John R. Crosby	Checkerboard Store Salesman	St. Louis, Mo.	25	
Keith Jungren	Storemanager and District Salesman	St. Louis, Mo.	35	x
Louis L. Tourgee	Store Manager, Harrisonburg, Va.	St. Louis, Mo.	25	x
Robert W. Waite	Store Manager, Winchester, Va.	St. Louis, Mo.	15	

PRETRIAL CONFERENCE EXHIBIT C

List of key employees of Ralston Purina Company who purchased common stock of the company at \$50 per share as of Sept. 30, 1948

Total number of names 20
 Number who were previously stockholders (90%) 18
 Total number of shares 1,120

Name of employee	Title or payroll classification	Location of employee (by plant, division, or sales office)	Number of shares purchased	Stock- holders (self or immediate family) at time of purchase (x)
ADVERTISING				
W. P. Hays	Asst. Dir. Advertising	St. Louis, Mo.	51	x
BUYING				
E. A. Cayce	Vice Pres. (Purchasing)	St. Louis, Mo.	120	x
R. H. Dean	Mgr., Grain Buying	St. Louis, Mo.	50	x
Paul C. Knowlton	Mgr., Checkerboard Elev. Co.	St. Louis, Mo.	20	x
D. B. Walker	Mgr., Soybean Division	St. Louis, Mo.	50	x
FINANCIAL				
Cottrell Fox	Mgr., Contract Div.	St. Louis, Mo.	7	x
L. B. Murdock	Mgr., Tax and Corporate Dept.	St. Louis, Mo.	10	x
E. R. Siler	Treasurer	St. Louis, Mo.	60	x
PERSONNEL				
A. S. Remphill	Mgr., Sanitation Plant	St. Louis, Mo.	10	x
F. W. Huntington	Vice Pres. (Personnel and Office)	St. Louis, Mo.	110	x
J. E. Schopflin	Mgr., Ad-Service Div.	St. Louis, Mo.	2	x
PRODUCTION				
ST. LOUIS OFFICE, LABORATORIES				
K. E. Garrison	Prod. Mgr., Cereal Plants	St. Louis, Mo.	100	x
Douglas Hale	Mgr., Cereal Development Div.	St. Louis, Mo.	10	
R. E. Rowland	Vice Pres. (Production)	St. Louis, Mo.	200	x
C. A. Tolin, Jr.	Prod. Mgr., Western Plants	St. Louis, Mo.	40	x
CEREAL AND SANITA- TION PLANTS				
Davenport, Iowa				
John Burrows	Manager	Davenport, Iowa	100	x
ADVERTISING				
Wm. D. Bowie	Supervising Copywriter	St. Louis, Mo.	40	x
W. D. Brockman	Mgr., Censor and Records Div., Promotion Dept.	St. Louis, Mo.	40	x
Lloyd Clay	Mgr., Radio Promotion Sec.	St. Louis, Mo.	5	
R. L. Eskridge	Editor, Dealer Publications	St. Louis, Mo.	3	x
C. C. Fawcett	Mgr., Art Division	St. Louis, Mo.	20	x
W. P. Hays	Asst. Director of Advertising	St. Louis, Mo.	100	x
Harry J. Holmes	Artist	St. Louis, Mo.	2	
Eugene Hoy	Senior Artist	St. Louis, Mo.	3	x
E. W. Kosfeld	Mgr., Dealer Adv. Div.	St. Louis, Mo.	7	x
John McGinty	Mgr., Promotion Div.	St. Louis, Mo.	90	x
Gregg Puster	Copywriter	St. Louis, Mo.	1	
Wm. J. Sims	Mgr., Special Promotions Div.	St. Louis, Mo.	20	x
Ed Smyth	Artist	St. Louis, Mo.	7	x
Mildred Zibell	Editor, Employee Magazine	St. Louis, Mo.	2	

List of key employees of Ralston Purina Company who purchased common stock of the company at \$50 per share as of Sept. 30, 1948—Continued

Name of employee	Title or payroll classification	Location of employee (by plant, division, or sales office)	Number of shares purchased	Stockholders (self or immediate family) at time of purchase (x)
BUYING				
L. M. Kishlar	Mgr., Animal Protein, Alfalfa Meal and Special Products Div.	St. Louis, Mo.	75	x
CEREAL				
C. A. McCray	District Salesmanager	Atlanta, Ga.	10	x
FINANCIAL				
Earl Alexander	Asst. Mgr., Accounting Div.	St. Louis, Mo.	20	x
Melvin Bahle	Accountant	St. Louis, Mo.	2	x
Julian Hoffmann	Asst. Mgr., Auditing Div.	St. Louis, Mo.	10	x
F. A. Judell	Senior Attorney	St. Louis, Mo.	10	x
Norma Wiedeker	Secy. to Mgr., Accounting Div.	St. Louis, Mo.	5	x

PRETRIAL CONFERENCE EXHIBIT D

List of key employees of Ralston Purina Company who purchased common stock of the company at \$55 per share as of Oct. 3, 1949

Total number of names 414
 Number who were previously stockholders (64%) 267
 Total number of shares 10,000

Name of employee	Title or payroll classification	Location of employee (by plant, division, or sales office)	Number of shares purchased	Stockholders (self or immediate family) at time of purchase (x)
ADVERTISING				
Wm. D. Bowie	Copywriter	St. Louis, Mo.	20	x
C. C. Fawcett	Mgr., Art Div., Prom. Dept.	St. Louis, Mo.	12	x
W. P. Hays	Asst. Dir. of Advertising	St. Louis, Mo.	100	x
Eugene Hoy	Senior Artist	St. Louis, Mo.	8	x
John McGinty	Mgr., Promotion	St. Louis, Mo.	50	x
G. M. Philipott	Vice Pres. (Promotion)	St. Louis, Mo.	42	x
William J. Sims	Mgr., Special Prom. Division	St. Louis, Mo.	20	x
BUYING				
Volley Branom	Mgr., Ingredient Supply Div.	St. Louis, Mo.	40	x
R. G. Bromley	Jr. Grain Merchandiser	Buffalo, N. Y.	5	
John P. Brown	Asst. Mgr., Soybean Div.	St. Louis, Mo.	15	x
E. A. Cayce	Vice Pres. (Purchasing)	St. Louis, Mo.	100	x
E. H. Dean	Mgr., Grain Buying Div.	St. Louis, Mo.	100	x
Wm. A. Krause	Mgr., Pricing Div.	St. Louis, Mo.	75	x
Harm D. Peters	Sr. Grain Merchandiser	St. Louis, Mo.	5	x
H. M. Robson	Purchasing Agent	St. Louis, Mo.	16	
Frank Tully	Purchasing Agent	St. Louis, Mo.	20	x
D. B. Walker	Mgr., Soybean Div.	St. Louis, Mo.	100	x
Raleigh Wilson	Intermediate Grain Merchandiser	St. Louis, Mo.	3	x

List of key employees of Ralston Purina Company who purchased common stock of the company at \$55 per share as of Oct. 3, 1949—Continued

Name of employee	Title or payroll classification	Location of employee (by plant, division, or sales office)	Number of shares purchased	Stockholders (self or immediate family) at time of purchase (x)
CEREAL				
Ivon Amend	Asst. District Salesman	San Francisco, Calif.	5	
Elsbeth Bennett	Mgr., Nutrition Service	St. Louis, Mo.	15	x
R. Z. Chew	Mgr., Private Label Div.	St. Louis, Mo.	25	x
M. G. Crider	Business Mgr., Office Div.	St. Louis, Mo.	25	x
J. B. Dallas	District Salesman	San Francisco, Calif.	25	x
Herb DeBoer	District Salesman	Seattle, Wash.	20	x
Guy Dougherty	District Sales Mgr.	Atlanta, Ga.	35	x
Leo Gaudreau	Retail Salesman	Boston, Mass.	10	
J. V. Gellin	Mgr., Cereal Sales and Promotion	St. Louis, Mo.	50	x
D. S. Hegmann	District Sales Manager	Boston, Mass.	40	x
R. L. Henry	District Sales Manager	Memphis, Tenn.	20	x
W. W. Knorr	District Sales Manager	Syracuse, N. Y.	35	x
Carlyle McCray	Retail Salesman	Philadelphia, Pa.	10	
L. C. McCray	District Sales Mgr.	Philadelphia, Pa.	49	x
S. B. McCurdy	Retail Salesman	Seattle, Wash.	20	x
C. K. Mills	District Sales Manager	Los Angeles, Calif.	30	x
R. C. Morgan	District Sales Manager	Cleveland, Ohio	43	x
K. K. Pauley	Retail Salesman	New York, N. Y.	20	x
A. O. Robertson	District Sales Manager	Fort Worth, Tex.	25	x
C. M. Siverson	Retail Salesman	Los Angeles, Calif.	10	
R. S. Smith	Vice Pres. (Cereals)	St. Louis, Mo.	50	x
J. J. Southcott, Jr.	Retail Salesman	Detroit, Mich.	2	x
Fred Weber	Mgr., Institutional Div.	St. Louis, Mo.	50	x
FINANCIAL				
Earl Alexander	Asst. Mgr., Acct. Div.	St. Louis, Mo.	10	x
Carl M. Bacon	Mgr., Budget Div.	St. Louis, Mo.	25	x
P. C. Baichly	Div. Credit Manager	St. Louis, Mo.	5	x
Otto Blumfelder	Asst. to Mgr. of Insurance Dept.	St. Louis, Mo.	5	x
S. M. Cole	Mgr., Gen. Cereal Order Div.	St. Louis, Mo.	15	x
G. L. Doerbaum	Div. Credit Manager	St. Louis, Mo.	20	x
Cottrell Fox	Mgr., Contract Div. of Legal Dept.	St. Louis, Mo.	5	x
V. W. Gieselman	Mgr., Insurance Dept.	St. Louis, Mo.	20	x
E. D. Godfrey	Mgr., Accounting Div.	St. Louis, Mo.	20	x
Julian Hoffman	Asst. Gen. Auditor	St. Louis, Mo.	19	
Fred Judel	Counsel—Legal Dept.	St. Louis, Mo.	30	x
Adeline John	Clerical Asst. in Cashier Dept.	St. Louis, Mo.	10	x
George M. Krauser	Asst. to Mgr. Consumer Credit Dept.	St. Louis, Mo.	5	x
L. B. Murdock	Mgr., Tax and Corporate Dept.	St. Louis, Mo.	30	x
Helen Nager	Secy. to Vice Pres.	St. Louis, Mo.	11	x
E. R. Or	Treasurer	St. Louis, Mo.	100	x
A. M. Stevens	Mgr., Gen. Consumer Div.	St. Louis, Mo.	10	x
Lewis B. Stuart	Vice Pres. (Finances)	St. Louis, Mo.	100	x
Norma Wiedeker	Clerical Asst. to Acctg. Mgr.	St. Louis, Mo.	3	x
PERSONNEL				
Naomi Burton	Mgr., Clerical Services	St. Louis, Mo.	5	x
E. M. DeVaux	Asst. Gen. Office Mgr.	St. Louis, Mo.	20	x
Elvera Hofmann	Asst. Mgr., Ad-Service	St. Louis, Mo.	10	x
G. R. Holroyd	Electrician—Maintenance Dept.	St. Louis, Mo.	6	x
F. W. Huntington	Vice Pres. (Personnel and Office)	St. Louis, Mo.	100	x
Frank Schliemann, Jr.	Mgr. Office Maintenance Div.	St. Louis, Mo.	8	x
J. E. Schopflin	Mgr., Ad-Service Div.	St. Louis, Mo.	5	x
John J. Skapik	Section Supervisor in Planning Division	St. Louis, Mo.	10	
Marie Walsh	Supervisor, Mail Section	St. Louis, Mo.	5	x
Joseph M. Whenden	Mgr., Office Supply Div.	St. Louis, Mo.	3	

List of key employees of Ralston Purina Company who purchased common stock of the company at \$55 per share as of Oct. 3, 1949—Continued

Name of employee	Title or payroll classification	Location of employee (by plant, division, or sales office)	Number of shares purchased	Stockholders (self or immediate family) at time of purchase (x)
PUBLIC RELATIONS				
Otis McIntosh	Director, Public Relations	St. Louis, Mo.	18	x
E. A. Sindecuse	Director, Public Relations	St. Louis, Mo.	50	x
J. D. Sykes	Vice Pres. (Public Relations)	St. Louis, Mo.	50	x
PRODUCTION				
<i>Battle Creek, Mich.</i>				
Howard Bacon	General Foreman	Battle Creek, Mich.	1	
William Barnes	Millwright Foreman	Battle Creek, Mich.	5	
Dick Bromley	Personnel Manager	Battle Creek, Mich.	5	
E. J. Carpenter	Laboratory Foreman	Battle Creek, Mich.	4	x
N. D. Heydenberk	Order Dept. Mgr.	Battle Creek, Mich.	4	
Clayton A. Iden	Packing Foreman	Battle Creek, Mich.	4	
Thomas H. Miner	General Foreman	Battle Creek, Mich.	5	x
Clare D. Townsend	Elevator Foreman	Battle Creek, Mich.	2	x
<i>Bloomington, Ill.</i>				
Jay L. Clark	Superintendent	Bloomington, Ill.	60	x
C. A. Edstrom	Acct. Dept. Mgr.	Bloomington, Ill.	4	x
N. B. Morey	Manager	Bloomington, Ill.	113	x
John O'Connor	Buyer	Bloomington, Ill.	10	x
Dale Wiegardt	Traffic Manager	Bloomington, Ill.	25	x
<i>Buffalo, N. Y.</i>				
Roger W. Hampton	Credit Manager	Buffalo, N. Y.	25	x
Jim Hedrick	Superintendent	Buffalo, N. Y.	50	x
Arthur Skibbe	Production Trainee	Buffalo, N. Y.	20	x
W. P. Thornton	Asst. Grain Buyer	Buffalo, N. Y.	6	x
K. G. Thur	Traffic Manager	Buffalo, N. Y.	10	x
C. V. Wasmund	Acct. Dept. Manager	Buffalo, N. Y.	10	x
<i>Charlotte, N. C.</i>				
J. A. Amos	Superintendent	Charlotte, N. C.	42	
Gil Brauch	Manager	Charlotte, N. C.	37	x
Joe D. Scott	Acctg. Dept. Mgr.	Charlotte, N. C.	10	
<i>Circleville, Ohio</i>				
A. V. Couch	Manager	Circleville, Ohio	33	x
Ray T. Friend	Superintendent	Circleville, Ohio	12	
M. J. Stephauiser	Order-Credit Manager	Circleville, Ohio	2	
<i>Davenport, Iowa</i>				
John Burrows	Manager	Davenport, Iowa	100	x
Edmund Cosby	Laboratory Asst	Davenport, Iowa	2	
Robert Garwood	Miller	Davenport, Iowa	4	
Ed Geest	Shipping Clerk	Davenport, Iowa	5	x
E. H. Hollen	Office Manager	Davenport, Iowa	10	
Howard C. Judd	Can Plant Foreman	Davenport, Iowa	2	
Harvey J. Keyoth	General Foreman, Cereals	Davenport, Iowa	2	x
Henry Leisnerking	Shipping Foreman	Davenport, Iowa	4	x
Robert Lerigo	Grain Buyer	Davenport, Iowa	3	
Louis Loulek	Foreman (Packing)	Davenport, Iowa	3	
Walter McDonald	Miller	Davenport, Iowa	4	x
William C. Mecker	Gen. Foreman (Chows)	Davenport, Iowa	5	
John McAvick	Buyer	Davenport, Iowa	10	x
George J. Myers	Production Trainee	Davenport, Iowa	6	
Oliver Mohr	Chow Foreman	Davenport, Iowa	6	
Arthur H. Parke	Traffic Clerk	Davenport, Iowa	3	
Raymond Tomlinson	Maintenance, Shift Leader	Davenport, Iowa	5	
George VanHouten	Mili Personnel, Safety, Ingredient Control	Davenport, Iowa	1	
Ralph H. Vidal	Superintendent	Davenport, Iowa	10	x

List of key employees of Ralston Purina Company who purchased common stock of the company at \$55 per share as of Oct. 3, 1949—Continued

Name of employee	Title or payroll classification	Location of employee (by plant, division, or sales office)	Number of shares purchased	Stockholders (self or immediate family) at time of purchase (x)
PRODUCTION—Con.				
<i>Denver, Colo.</i>				
Ted Chafee	Manager	Denver, Colo.	10	x
T. F. Warshauer	Production Trainee	Denver, Colo.	4	
<i>Dundee, Mich.</i>				
H. C. Weghorst	Manager	Dundee, Mich.	12	x
<i>Fort Worth, Tex.</i>				
E. E. Braznell	Superintendent	Fort Worth, Tex.	5	x
Roger L. George	Traffic Manager	Fort Worth, Tex.	25	x
Loy Ledbetter, Jr.	Asst. Buyer	Fort Worth, Tex.	15	x
Alva Merideth	General Foreman	Fort Worth, Tex.	2	
<i>Iowa Falls, Iowa</i>				
H. N. Johnson	Manager	Iowa Falls, Iowa	12	x
Arno Tagge	Asst. Manager	Iowa Falls, Iowa	2	x
<i>Kansas City, Mo.</i>				
Charles C. Huber	Production Trainee	Kansas City, Mo.	1	
<i>Lafayette, Ind.</i>				
Norman Adkins	Superintendent	Lafayette, Ind.	20	x
Joseph F. Bonner	Asst. Manager	Lafayette, Ind.	5	x
R. M. Guenther	Manager	Lafayette, Ind.	70	x
<i>Los Angeles, Calif.</i>				
J. P. Andrews	Manager	Los Angeles, Calif.	20	x
F. E. Boss	Buyer	Los Angeles, Calif.	10	x
Robert A. Moffitt	Laboratory Manager	Los Angeles, Calif.	10	
A. G. Richmond, Jr.	Office Mgr. and Order-Credit Mgr.	Los Angeles, Calif.	5	
Ross B. Smithson	Superintendent	Los Angeles, Calif.	60	x
Jerome C. Weber	Acctg. Dept. Mgr.	Los Angeles, Calif.	6	
<i>Miami, Fla.</i>				
Rennie Berry	Superintendent	Miami, Fla.	5	
James R. Lepine	Manager	Miami, Fla.	10	
<i>Minneapolis, Minn.</i>				
Gordon L. Ekberg	Loading Foreman	Minneapolis, Minn.	10	x
Ted Hetchkiss	Buyer	Minneapolis, Minn.	10	
Robert L. Ranney	Superintendent	Minneapolis, Minn.	35	x
A. C. Weber	Manager	Minneapolis, Minn.	25	x
<i>Minneapolis, Minn. (Ry-Krisp Plant)</i>				
Algot Hoberg	Bakeshop Foreman	Minneapolis, Minn.	1	x
Richard Partridge	Asst. Superintendent	Minneapolis, Minn.	5	
Edward Uhrich	Maintenance Foreman	Minneapolis, Minn.	2	x
Oscar Wicks	Packing Foreman	Minneapolis, Minn.	1	x
<i>Nashville, Tenn.</i>				
J. F. Austin	Superintendent	Nashville, Tenn.	50	x
John Blunt	Manager	Nashville, Tenn.	75	x
W. A. Gunn	Asst. Manager	Nashville, Tenn.	46	x
James D. Martin	Production Trainee	Nashville, Tenn.	2	

List of key employees of Ralston Purina Company who purchased common stock of the Company at \$70 per share as of Sept. 22, 1950—Continued

Name of employee	Title or payroll classification	Location of employee (by plant, division, or sales office)	Number of shares purchased	Stockholders (self or immediate family) at time of purchase (x)
SALES—Con.				
North Atlantic States Division				
George W. Barton	District Salesman	Buffalo, N. Y.	15	x
Floyd Blaser	Territory Salesman	Buffalo, N. Y.	10	x
Ralph Everett	District Salesman	Buffalo, N. Y.	20	x
C. Dean Fales	Asst. Division Sales Mgr.	Buffalo, N. Y.	50	x
H. I. Frederick	District Salesman	Buffalo, N. Y.	25	x
Carl W. Fribohn	District Salesman	Buffalo, N. Y.	25	
John Hallinan	District Salesman	Buffalo, N. Y.	25	
D. R. Hodgins	District Salesman	Buffalo, N. Y.	25	x
J. B. Johnson	District Salesman	Buffalo, N. Y.	25	x
C. W. Meyer	District Salesman	Buffalo, N. Y.	15	x
L. O. Reynolds	District Salesman	Buffalo, N. Y.	5	
Warren Searfoss	District Salesman	Buffalo, N. Y.	20	x
J. G. Stecher	Territory Salesman	Buffalo, N. Y.	10	x
S. A. White	Division Sales Manager	Buffalo, N. Y.	50	x
Stanley M. Woolley	Territory Salesman	Buffalo, N. Y.	25	x
Shore Division				
Olin M. Avis	Territory Salesman	St. Louis, Mo.	10	x
J. D. Davis	Territory Salesman	St. Louis, Mo.	10	x
C. M. Dryden	Territory Salesman	St. Louis, Mo.	25	x
Meade Summers	Division Sales Manager	St. Louis, Mo.	60	x
EASTERN REGION—GENERAL STAFF				
Vincent A. Bergman	Mgr., Merchandising	St. Louis, Mo.	50	x
Hollis H. Brower	Mgr., Poultry Meat Sales	St. Louis, Mo.	20	x
Irene Pitts	Secy. to Regional Sales Mgr.	St. Louis, Mo.	30	x
Wm. Thompson	Mgr. Sanitation and Farm Supply Sales	St. Louis, Mo.	10	
STORES				
Northern Stores				
Roger Barden	Store Manager	St. Louis, Mo.	5	x
Norris S. Edmunds	Store Manager	St. Louis, Mo.	30	
John Ghenes	Store Manager	St. Louis, Mo.	3	
James L. Hammett	Store Manager	St. Louis, Mo.	5	
S. G. Maniatty	Store Manager	St. Louis, Mo.	2	x
John P. O'Brien	Store Manager	St. Louis, Mo.	5	
Earl Rankin	Store Manager	St. Louis, Mo.	5	
F. D. Smith	Manager, Northern Stores	St. Louis, Mo.	40	x
Elbert Truesdale	Store Manager	St. Louis, Mo.	5	
Bernard L. Young	Store Manager	St. Louis, Mo.	5	
Southern Stores				
W. F. Cash, Jr.	Store Manager	St. Louis, Mo.	40	
P. E. Freeman	Store Manager	St. Louis, Mo.	20	
J. P. Garvin, Jr.	Store Manager	St. Louis, Mo.	3	
W. W. Holloway	Store Manager	St. Louis, Mo.	20	
M. Forest Randolph	Store Manager	St. Louis, Mo.	10	
Louis L. Tourgee, Jr.	Store Manager	St. Louis, Mo.	75	x
R. W. Waite, Jr.	Store Manager	St. Louis, Mo.	15	x

List of key employees of Ralston Purina Company who purchased common stock of the company at \$55 per share as of Oct. 3, 1949—Continued

Name of employee	Title or payroll classification	Location of employee (by plant, division, or sales office)	Number of shares purchased	Stock- holder (self or immediate family) at time of purchase (x)
PRODUCTION—Con.				
<i>Oakland, Calif.</i>				
W. R. Arends	Manager	Oakland, Calif.	100	x
Edwin C. Murray	Superintendent	Oakland, Calif.	20	x
William G. Raymond	Buyer	Oakland, Calif.	4	
Herold Zerweck	Accountant and Office Mgr	Oakland, Calif.	5	x
<i>Omaha, Nebr.</i>				
Dewey C. Agnew	Superintendent	Omaha, Nebr.	9	x
Roy M. Bernhardt	Stock Foreman	Omaha, Nebr.	3	
Lloyd R. Grover	Production Foreman	Omaha, Nebr.	4	
Keith J. Peck	Traffic Manager	Omaha, Nebr.	1	
<i>Pocatello, Idaho</i>				
Harold Ory	Manager	Pocatello, Idaho	20	x
Charles Ward	Superintendent	Pocatello, Idaho	20	
<i>Richmond, Ind.</i>				
V. H. Frisch	Manager	Richmond, Ind.	10	x
Dwight E. Lanman, Sr.	Superintendent	Richmond, Ind.	6	
Richard D. Spencer	Acctg. Dept. Mgr.	Richmond, Ind.	2	
David Toschlog	Order Dept. Mgr.	Richmond, Ind.	4	
<i>St. Johnsbury, Vt.</i>				
Norman Chase	Stores Accountant	St. Johnsbury, Vt.	5	
C. W. Hedrick	Manager	St. Johnsbury, Vt.	14	x
Paul Munkittrick	Mill Office Mgr.	St. Johnsbury, Vt.	1	
<i>St. Louis, Mo.</i>				
Harry Colwell	Manager	St. Louis, Mo.	35	x
Alex Gardner	Production Foreman	St. Louis, Mo.	10	x
H. E. Haecker	Stock Dept. Mgr.	St. Louis, Mo.	4	x
George Lanz	Production Trainee	St. Louis, Mo.	10	
Fred Neil	Credit Dept. Mgr.	St. Louis, Mo.	5	
Edward C. Niles, Jr.	Acctg. Dept. Mgr.	St. Louis, Mo.	10	x
H. Schaeperkoetter	Traffic Dept. Mgr.	St. Louis, Mo.	8	x
L. D. Varble	Office Manager	St. Louis, Mo.	20	x
<i>Sanitation Plant</i>				
A. S. Hemphill	Manager	St. Louis, Mo.	10	x
Fred Homfekt	Stock Clerk	St. Louis, Mo.	3	
Al Jensch	Office Manager	St. Louis, Mo.	4	x
Joe Yakopovic	Manager, Order-Traffic	St. Louis, Mo.	2	
<i>Stockton, Calif.</i>				
Joseph Grifalva	Superintendent	Stockton, Calif.	10	
Wayne D. Nusbaum	Manager	Stockton, Calif.	20	x
<i>Tampa, Fla.</i>				
Francis J. Davis	Manager	Tampa, Fla.	10	x
Hubert L. Parr, Jr.	Order-Traffic Dept. Mgr.	Tampa, Fla.	2	
<i>Visalia, Calif.</i>				
Buzz Sted	Manager	Visalia, Calif.	18	x
Alex Wainwright	Accountant	Visalia, Calif.	5	
<i>Wichita, Kans.</i>				
Frank E. Earnst	Chow Production Leader	Wichita, Kans.	20	
O. P. Sherrill	Manager	Wichita, Kans.	20	x
Wm. A. Winter	Superintendent	Wichita, Kans.	20	x

PRETRIAL CONFERENCE EXHIBIT F

List of key employees of Ralston Purina Company who requested an opportunity to purchase common stock of the Company in Sept. or Oct. 1951

Total number of names 167
 Number who were previously stockholders (83.2%) 139
 Total number of shares 3,769

Name of employee	Title or payroll classification	Location of employee (by plant, division, or sales office)	Number of shares purchased	Stockholders (self or immediate family) at time of purchase (x)
PERSONNEL				
F. W. Huntington	Vice Pres., Personnel and Office	St. Louis, Mo.	100	x
PUBLIC RELATIONS				
O. O. McIntosh	Director of Public Relations	St. Louis, Mo.	15	x
Marie Schaffer	Secy. to Vice President, Public Relations	St. Louis, Mo.	2	x
Earl A. Sindecuse	Director of Public Relations	St. Louis, Mo.	100	x
PRODUCTION				
EASTERN PLANTS				
Buffalo, N. Y.				
Bill Derr	Credit Department	Buffalo, N. Y.	50	
Roger Hampton	Credit Manager	Buffalo, N. Y.	100	x
F. W. Karl	Foreman	Buffalo, N. Y.	5	x
P. M. Rizzo	Foreman	Buffalo, N. Y.	5	x
Charlotte, N. C.				
Don Fischer	Asst. Standards Mgr.	Charlotte, N. C.	6	x
Delmar, Del.				
S. A. White	Manager	Delmar, Del.	50	x
Jackson, Miss.				
W. G. Winter	Superintendent	Jackson, Miss.	7	x
Miami, Fla.				
J. Q. Tilghman	Manager	Miami, Fla.	7	x
Wilmington, Del.				
A. L. Fager	Asst. Manager	Wilmington, Del.	2	x
CENTRAL PLANTS				
Bloomington, Ill.				
R. G. Fagerburg	Order-Credit Mgr.	Bloomington, Ill.	1	
Fort Worth, Tex.				
R. E. Cowan	Manager	Fort Worth, Tex.	63	x
R. S. Cowan	Maintenance Foreman	Fort Worth, Tex.	26	x
Chas. DeVol	Order Credit Manager	Fort Worth, Tex.	5	x
Etta Pauline Martin	Chief-Order Dept.	Fort Worth, Tex.	5	x
L. A. Pharr	Asst. Manager	Fort Worth, Tex.	20	x
J. R. Turner	Accounting Dept. Mgr.	Fort Worth, Tex.	5	x
Iowa Falls, Iowa				
Harold W. Bell	Order-Credit Mgr.	Iowa Falls, Iowa	2	x
H. N. Johnson	Manager	Iowa Falls, Iowa	20	x
Barney McCoy	Buyer	Iowa Falls, Iowa	10	

List of key employees of Ralston Purina Company who purchased common stock of the company at \$55 per share as of Oct. 3, 1949—Continued

Name of employee	Title or payroll classification	Location of employee (by plant, division, or sales office)	Number of shares pur- chased	Stock- holders (self or immediate family) at time of purchase (X)
PRODUCTION—CON.				
<i>Wilmington, Del.</i>				
Ralph B. Dill, Jr.	General Foreman	Wilmington, Del.	4	X
Edward A. Dunning	Superintendent	Wilmington, Del.	10	X
D. F. Reeder	Manager	Wilmington, Del.	10	X
ST. LOUIS GENERAL OFFICE				
L. C. Altmansberger	Mgr., Budget and Cost Division	St. Louis, Mo.	10	X
T. R. Atchison	Gen. Traffic Manager	St. Louis, Mo.	100	X
D. K. English	Mgr., Engineering Dept.	St. Louis, Mo.	120	X
K. E. Garrison	Mgr., Cereal and Sanitation Plants	St. Louis, Mo.	150	X
Carl Gettler	Cereal Division Engineer	St. Louis, Mo.	25	X
Dave E. Grant	Production Mgr., Eastern Div.	St. Louis, Mo.	50	X
Douglas Hale	Mgr., Cereal Development Div.	St. Louis, Mo.	15	X
J. F. Jones	Production Mgr., Western Div.	St. Louis, Mo.	18	X
Harry Knoblock	Traffic Mgr., Merchandise and Cereal Div.	St. Louis, Mo.	6	X
Norvell J. Martin	Eastern Div. Engineer	St. Louis, Mo.	15	X
Wm. O. Maurer	Central Div. Engineer	St. Louis, Mo.	80	X
J. R. McCann	Mgr. Fire Prevention Div.	St. Louis, Mo.	5	
A. J. O'Brien	Personnel Mgr.	St. Louis, Mo.	35	X
Mary Jane Pickel	Secy. to Vice President	St. Louis, Mo.	5	X
Claude F. Ross	Staff Engineer, Engrg. Dept.	St. Louis, Mo.	10	
R. E. Rowland	Vice Pres. (Production)	St. Louis, Mo.	399	X
C. B. Smith	Asst. Utilities Engineer	St. Louis, Mo.	6	
George H. Steel	Safety Director	St. Louis, Mo.	6	X
Alvin Tolln	Production Mgr., Central Plants	St. Louis, Mo.	50	X
John R. Wright	Western Div. Engineer	St. Louis, Mo.	27	X
RESEARCH				
B. F. Beaver	Mgr., Chemical and Control Div. of Disease Control Lab.	St. Louis, Mo.	8	
Roy Brandenburger	Mgr., Sanitation and Farm Supply Dept.	St. Louis, Mo.	75	X
C. S. Johnson	Vice Pres. (Products and Research)	St. Louis, Mo.	100	X
Emmett B. Johnson	Asst. Mgr., Product Control Dept.	St. Louis, Mo.	80	X
R. E. Lubbehusen	Mgr., Disease Control Labs.	St. Louis, Mo.	25	X
Tom J. Potts	Mgr., Analytical Laboratory	St. Louis, Mo.	5	X
H. C. Schaefer	Mgr., Nutrition Res. Labs.	St. Louis, Mo.	10	X
W. C. Schofield	Asst. Mgr., Disease Control Labs.	St. Louis, Mo.	25	X
W. C. Sherman	Mgr., Biological Res. Labs.	St. Louis, Mo.	2	X
Harold Sleight	Mgr., Farm Management Div. of Research Dept.	St. Louis, Mo.	3	
John Wear	Mgr., Experimental Farm	St. Louis, Mo.	10	X
Claude Welch	Mgr., Product Control	St. Louis, Mo.	10	X
Harold Wilcke	Asst. Director of Research	St. Louis, Mo.	45	X

List of key employees of Ralston Purina Company who purchased common stock of the company at \$55 per share as of Oct. 3, 1949—Continued

Name of employee	Title or payroll classification	Location of employee (by plant, division, or sales office)	Number of shares purchased	Stockholders (self or immediate family) at time of purchase (x)
SALES				
EASTERN REGION				
<i>Canadian Division</i>				
Henrico Boissy	District Salesman	Toronto, Ontario	10	
<i>Central Atlantic States Division</i>				
L. B. Agee	District Salesman	Baltimore, Md.	25	x
C. M. Apgar	Territory Salesman	Baltimore, Md.	5	x
W. E. Cassell	Territory Salesman	Baltimore, Md.	5	
C. E. Ficke	District Salesman	Baltimore, Md.	15	x
J. D. Fowler	Territory Salesman	Baltimore, Md.	5	x
Horace V. Ginn, Jr.	Territory Salesman	Baltimore, Md.	5	
C. A. Hauck	District Salesman	Baltimore, Md.	25	x
J. W. Honeysett	District Salesman	Baltimore, Md.	20	x
George Richardson	Salesmanager	Baltimore, Md.	20	x
P. H. Sprenkle	District Salesman	Baltimore, Md.	25	x
W. F. Sumner	District Salesman	Baltimore, Md.	10	
W. P. Thomas	District Salesman	Baltimore, Md.	50	x
F. L. Wickham	District Salesman	Baltimore, Md.	25	x
A. E. Williams	Territory Salesman	Baltimore, Md.	10	x
A. S. Zerbo	District Salesman	Baltimore, Md.	70	x
<i>Lake States Division</i>				
Luther Fettes	Territory Salesman	Columbus, Ohio	4	
John Harmon	District Salesman	Columbus, Ohio	18	
Fred Schuler	District Salesman	Columbus, Ohio	20	x
<i>New England Division</i>				
Stanley Baraw	District Salesman	Boston, Mass.	60	
G. M. Gockman	District Salesman	Boston, Mass.	10	x
John Goord, Jr.	District Salesman	Boston, Mass.	10	
Dwight Harlow	District Salesman	Boston, Mass.	20	
Hollis Humphrey	Territory Salesman	Boston, Mass.	25	
B. B. Hussey	Territory Salesman	Boston, Mass.	2	
Eric B. Johnson	Territory Salesman	Boston, Mass.	25	
T. R. O'Toole	Territory Salesman	Boston, Mass.	2	
C. J. Reylek	District Salesman	Boston, Mass.	80	x
<i>North Atlantic Division</i>				
George Ash, Jr.	District Salesman	Buffalo, N. Y.	10	
R. E. Barden	Mgr., Check-R-Board Store	Binghamton, N. Y.	10	
G. W. Barden	District Salesman	Buffalo, N. Y.	10	
Ralph Everett	District Salesman	Buffalo, N. Y.	50	
Dean Fales	Staff Man.	St. Louis, Mo.	20	x
Harold Frederick	District Salesman	Buffalo, N. Y.	30	x
D. R. Hodgins	District Salesman	Buffalo, N. Y.	15	x
J. B. Johnson	District Salesman	Buffalo, N. Y.	10	x
C. W. Meyer	District Salesman	Buffalo, N. Y.	20	
E. S. Morse	Territory Salesman	Buffalo, N. Y.	10	
W. H. Searfoss	District Salesman	Buffalo, N. Y.	20	x
L. R. Shultz	District Salesman	Buffalo, N. Y.	20	
J. G. Stecher	Territory Salesman	Buffalo, N. Y.	5	
K. O. Stephens	District Salesman	Buffalo, N. Y.	11	x
B. J. Terpenning	Mgr., Check-R-Board Store	Owego, N. Y.	5	
S. A. White	Salesmanager	Buffalo, N. Y.	50	x
<i>Shore Division</i>				
J. A. Correll	District Salesman	St. Louis, Mo.	30	x
James D. Davis	Territory Salesman	St. Louis, Mo.	20	x
Meade Summers	Salesmanager	St. Louis, Mo.	116	x

List of key employees of Ralston Purina Company who purchased common stock of the company at \$55 per share as of Oct. 3, 1949—Continued

Name of employee	Title or payroll classification	Location of employee (by plant, division, or sales office)	Number of shares purchased	Stockholders (self or immediate family) at time of purchase (x)
SALES—CON.				
ST. LOUIS GENERAL OFFICE				
V. A. Bergman	Merchandising Mgr.	St. Louis, Mo.	70	x
Hollis Brower	Mgr., Poultry and Fattening Chow Sales.	St. Louis, Mo.	10	x
Albert Leonard	Mgr., Livestock and Specialty Chow Sales.	St. Louis, Mo.	14	x
Irene Pitts	Secy. to Sales Manager	St. Louis, Mo.	8	x
GRAIN BELT—WESTERN REGION				
California Division				
Noel E. Bengert	District Salesman	Los Angeles, Calif.	10	
Redmond Cotter	District Salesman	Los Angeles, Calif.	3	
Willard Gray	District Salesman	Los Angeles, Calif.	10	
C. C. Henley	District Salesman	Los Angeles, Calif.	5	x
Gilbert Hopkins	Territory Salesman	Los Angeles, Calif.	5	
E. D. Marshall	Territory Salesman	Los Angeles, Calif.	5	
Herb Mergendoller	Territory Salesman	Los Angeles, Calif.	10	
Fred Perner	District Salesman	Los Angeles, Calif.	5	
Don Purcell	Salesmanager	Los Angeles, Calif.	80	
Dan J. Ramey	District Salesman	Los Angeles, Calif.	10	
Robert Tewksbury	District Salesman	Los Angeles, Calif.	5	
Keith Weltz	Staff Man.	Los Angeles, Calif.	10	x
Robert Woolley	Staff Man.	Los Angeles, Calif.	10	
John H. Zieten	District Salesman	Los Angeles, Calif.	15	
Central States Division				
J. O. Reasley	District Salesman	St. Louis, Mo.	10	x
R. W. Boatright	District Salesman	St. Louis, Mo.	5	x
Horace Boyd	Territory Salesman	St. Louis, Mo.	10	x
C. N. Dannacher	Territory Salesman	St. Louis, Mo.	5	x
M. R. DeVoe	District Salesman	St. Louis, Mo.	20	x
J. C. Dixon	District Salesman	St. Louis, Mo.	10	
F. R. Harrison	District Salesman	St. Louis, Mo.	5	x
Ray Hopewell	District Salesman	St. Louis, Mo.	10	
W. C. Hooper	District Salesman	St. Louis, Mo.	10	x
K. V. Johnson	District Salesman	St. Louis, Mo.	5	
William L. Kerth	District Salesman	St. Louis, Mo.	10	
M. E. Lipscomb	District Salesman	St. Louis, Mo.	15	x
H. B. Morris	District Salesman	St. Louis, Mo.	25	x
K. G. Walsh	District Salesman	St. Louis, Mo.	10	x
John Wunderlich	District Salesman	St. Louis, Mo.	20	x
Missouri-Iowa Division				
W. R. Allan	District Salesman	Des Moines, Iowa	15	
Harry W. Allen	District Salesman	Des Moines, Iowa	16	x
L. P. Flickinger	District Salesman	Des Moines, Iowa	20	
John A. Harrison	District Salesman	Des Moines, Iowa	10	x
B. E. Henscock	District Salesman	Des Moines, Iowa	20	x
L. W. Karr	Salesmanager	Des Moines, Iowa	28	x
B. M. Knight	District Salesman	Des Moines, Iowa	10	x
Henry R. Lyle, Jr.	Territory Salesman	Des Moines, Iowa	10	
J. W. McBurney	District Salesman	Des Moines, Iowa	10	x
Thane Merrill	Territory Salesman	Des Moines, Iowa	5	
Louis H. Ostrom	District Salesman	Des Moines, Iowa	15	
Mountain Division				
Paul E. Austin	District Salesman	Denver, Colo.	20	x
C. F. Bathke	District Salesman	Denver, Colo.	3	
George L. Fouke	District Salesman	Denver, Colo.	25	
W. O. Garwood	District Salesman	Denver, Colo.	10	
Jack Greenwalt	District Salesman	Denver, Colo.	10	x
W. B. Kilgore	Salesmanager	Denver, Colo.	50	x
A. G. Sallen	Territory Salesman	Denver, Colo.	20	

List of key employees of Ralston Purina Company who purchased common stock of the company at \$55 per share as of Oct. 3, 1949—Continued

Name of employee	Title or payroll classification	Location of employee (by plant, division, or sales office)	Number of shares purchased	Stockholders (self or immediate family) at time of purchase (X)
SALIS—Con.				
North Central States Division				
Carl W. Anderson	District Salesman	Minneapolis, Minn.	5	
H. E. Bilgrien	District Salesman	Minneapolis, Minn.	20	
James N. Dalton	District Salesman	Minneapolis, Minn.	10	
Eric K. Engman	Territory Salesman	Minneapolis, Minn.	10	
Lucille Henriksen	Secretary	Minneapolis, Minn.	10	X
Glenn R. Hicks	District Salesman	Minneapolis, Minn.	10	
Harold Holl	District Salesman	Minneapolis, Minn.	10	
N. L. Purcell	District Salesman	Minneapolis, Minn.	5	X
Erdman Reichart	District Salesman	Minneapolis, Minn.	15	
K. L. Thompson	District Salesman	Minneapolis, Minn.	10	X
C. P. Williamson	District Salesman	Minneapolis, Minn.	10	X
Western States Division				
A. D. Adair	District Salesman	Kansas City, Mo.	10	X
C. C. Armstrong	District Salesman	Kansas City, Mo.	100	X
J. W. Carter	District Salesman	Kansas City, Mo.	20	X
Dorothy Dieckman	Secretary	Kansas City, Mo.	10	X
G. L. James	Salesmanager	Kansas City, Mo.	100	X
O. C. King	District Salesman	Kansas City, Mo.	50	X
R. E. Moser	District Salesman	Kansas City, Mo.	20	X
W. D. Noakes	District Salesman	Kansas City, Mo.	10	
E. B. Repogle	District Salesman	Kansas City, Mo.	20	X
A. B. Schaefer	District Salesman	Kansas City, Mo.	5	X
Edward H. Shores	District Salesman	Kansas City, Mo.	20	
Omar J. Strout	Territory Salesman	Kansas City, Mo.	5	
W. W. Ward	District Salesman	Kansas City, Mo.	15	
ST. LOUIS GENERAL OFFICE				
C. R. Bankhead	Mgr. Livestock Chow Sales, Grainbelt Western Region.	Kansas City, Mo.	50	X
J. E. Hoff	Mgr. Poultry Chow Sales, Grainbelt Western Region.	Kansas City, Mo.	40	X
B. R. McCrory	Mgr. Special Chows, Grainbelt Western Region.	Kansas City, Mo.	15	X
Helen Miller	Sec'y. Sales Manager, Grainbelt Western Region.	Kansas City, Mo.	20	X
E. B. Pratt	Mgr. Dairy Chow Sales, Grainbelt Western Region.	Kansas City, Mo.	20	X
SOUTHERN REGION				
Nashville Division				
G. S. Crowe	District Salesman	Nashville, Tenn.	20	X
C. I. Doss	District Salesman	Nashville, Tenn.	50	X
Ira Fears	District Salesman	Nashville, Tenn.	40	X
R. H. Jarrett	District Salesman	Nashville, Tenn.	50	X
H. L. Olyniec	District Salesman	Nashville, Tenn.	20	X
Harold Shelburne	Territory Salesman	Nashville, Tenn.	50	
James F. Short	District Salesman	Nashville, Tenn.	80	
Jack Streetman	Salesmanager	Nashville, Tenn.	50	X
J. H. Watson	District Salesman	Nashville, Tenn.	25	X
South Atlantic Division				
H. G. Bolton	District Salesman	Charlotte, N. C.	20	X
Hollis Franks	District Salesman	Charlotte, N. C.	100	X
Lyle Leichter	District Salesman	Charlotte, N. C.	100	
Heath B. Marsh	District Salesman	Charlotte, N. C.	70	X
J. V. McAllister	District Salesman	Charlotte, N. C.	20	X
William L. Smith	District Salesman	Charlotte, N. C.	10	
C. O. White	District Salesman	Charlotte, N. C.	50	X

List of key employees of Ralston Purina Company who purchased common stock of the company at \$55 per share as of Oct. 3, 1949—Continued

Name of employee	Title or payroll classification	Location of employee (by plant, division, or sales office)	Number of shares purchased	Stockholders (self or immediate family) at time of purchase (X)
SALES—CON.				
<i>South Central Division</i>				
J. H. Branch	Salesmanager	Memphis, Tenn.	70	X
John H. Clemmons	District Salesman	Memphis, Tenn.	2	
C. M. Close	District Salesman	Memphis, Tenn.	100	X
Warren Garrard, Jr.	Territory Salesman	Memphis, Tenn.	10	
T. H. Hagan	District Salesman	Memphis, Tenn.	10	
J. E. Ruffin	District Salesman	Memphis, Tenn.	1	
Jesse R. Stone	District Salesman	Memphis, Tenn.	10	
R. C. Trice	District Salesman	Memphis, Tenn.	10	
Hollis Turner	Territory Salesman	Memphis, Tenn.	20	
T. E. Veitch	District Salesman	Memphis, Tenn.	50	X
Maurice Wilson	Territory Salesman	Memphis, Tenn.	2	
<i>Southeastern States Division</i>				
C. M. Allen	District Salesman	Jacksonville, Fla.	10	X
L. C. Cardinal	District Salesman	Jacksonville, Fla.	50	X
R. L. Carter, Jr.	District Salesman	Jacksonville, Fla.	40	X
H. A. Higginbotham	District Salesman	Jacksonville, Fla.	20	
J. E. Hinchshaw	Salesmanager	Jacksonville, Fla.	137	X
H. M. Nonnemacher	District Salesman	Jacksonville, Fla.	25	X
Tom Preston	District Salesman	Jacksonville, Fla.	7	X
W. E. Sherrell	District Salesman	Jacksonville, Fla.	25	X
C. O. Stephens, Jr.	District Salesman	Jacksonville, Fla.	5	
J. Q. Tilghman	District Salesman	Jacksonville, Fla.	10	X
James M. Warnock	Territory Salesman	Jacksonville, Fla.	5	
<i>Texas Division</i>				
O. L. Cooper	District Salesman	Austin, Tex.	10	X
C. W. Crawley	Territory Salesman	Austin, Tex.	10	
John T. Frazier	District Salesman	Austin, Tex.	20	X
O. W. Hampton	District Salesman	Austin, Tex.	20	
Sam H. Morrill	District Salesman	Austin, Tex.	10	
R. Lyles Payne	Territory Salesman	Austin, Tex.	10	
Arch Price	District Salesman	Austin, Tex.	75	X
R. C. Scott	District Salesman	Austin, Tex.	100	X
Jack Turner	District Salesman	Austin, Tex.	15	
ST. LOUIS GENERAL OFFICE				
Dorsey Guthrie	Mgr. Special Product Sales, Southern Region.	St. Louis, Mo.	25	X
Carl Leupold	Merchandise Mgr., Southern Region.	St. Louis, Mo.	30	X
Kathleen O'Rourke	Secy. Sales Manager	St. Louis, Mo.	2	
J. B. Pullen	Sales Mgr. Livestock Sales, Southern Region.	St. Louis, Mo.	70	X
ST. LOUIS GENERAL STAFF				
Beryl Campbell	Asst. to Gen'l. Sales Mgr.	St. Louis, Mo.	18	X
C. S. Coyle	Mgt. Custom Mixing Div.	St. Louis, Mo.	20	X
George Otto	Mgr. Dealef Store Management.	St. Louis, Mo.	25	X
E. M. Putney	Vice Pres.-Gen'l. Mgr. Chow Sales.	St. Louis, Mo.	100	X
Harry Scott	Mgr. Export Sales Div.	St. Louis, Mo.	60	X
Fletcher Smith	Mgr. Northern Div. Check-R-Board Stores.	St. Louis, Mo.	35	X
Harry Stein	Mgr. Southern Div. Check-R-Board Stores.	St. Louis, Mo.	30	
S. C. Wise	Mgr. Dealer Money Management Div.	St. Louis, Mo.	10	X
EXECUTIVE SPECIAL				
Donald Danforth	President	St. Louis, Mo.	100	X
Evelyn Leatherbury	Secy. to Chairman of the Board.	St. Louis, Mo.	50	X
Tom Roe	Asst. to Chairman of the Board	St. Louis, Mo.	10	X

PRETRIAL CONFERENCE EXHIBIT E

List of key employees of Ralston Purina Company who purchased common stock of the Company at \$70 per share as of Sept. 22, 1950

Total number of names 411
 Number who were previously stockholders (73%) 300
 Total number of shares 9,659

Name of employee	Title or payroll classification	Location of employee (by plant, division, or sales office)	Number of shares purchased	Stockholders (self or immediate family) at time of purchase (x)
*ADVERTISING				
W. R. Boulware	Senior Asst., Advertising	St. Louis, Mo.	6	x
W. D. Bowie	Supervising Copywriter	St. Louis, Mo.	30	x
W. D. Brockman	Mgr., Censor & Records Division, Promotion Dept.	St. Louis, Mo.	10	x
R. L. Eskridge	Editor, Dealer Publications	St. Louis, Mo.	5	
C. C. Fawcett	Manager, Art Division, Promotion Dept.	St. Louis, Mo.	22	x
W. P. Hays	Asst. Director of Advertising	St. Louis, Mo.	50	x
E. H. Hoy	Senior Artist	St. Louis, Mo.	2	x
M. E. Mallin	Mgr., Chow Advertising Div., Promotion Dept.	St. Louis, Mo.	30	x
John McGinty	Mgr., Promotion Div., Promotion Dept.	St. Louis, Mo.	80	x
W. J. Sims	Mgr., Special Promotions Div., Promotion Dept.	St. Louis, Mo.	15	x
BUYING				
Volley Bransom	Mgr., Ingredient Supply Dept.	St. Louis, Mo.	30	x
John Brown	Asst. Mgr., Soybean Section, Buying Department	St. Louis, Mo.	28	x
E. A. Cayce	Vice President (Purchasing)	St. Louis, Mo.	100	x
R. H. Dean	Mgr., Grain Buying	St. Louis, Mo.	100	x
William Krause	Mgr., Pricing Div., Buying Dept.	St. Louis, Mo.	50	x
Herbert S. Meredith	Asst. Mgr., Pricing Div., Buying Dept.	St. Louis, Mo.	10	x
Harm D. Peters	Senior Grain Merchandiser	St. Louis, Mo.	10	x
Harold Robson	Purchasing Agent	St. Louis, Mo.	8	x
John J. Skapik	Asst. to Mgr., Bag Supply Dept.	St. Louis, Mo.	10	x
Frank Tully	Purchasing Agent	St. Louis, Mo.	15	x
Donald Walker	Mgr., Soybean Div., Buying Dept.	St. Louis, Mo.	100	x
CEREAL				
Elspeth Bennett	Mgr. Nutrition Service	St. Louis, Mo.	5	x
M. G. Cridler	Business Mgr., Office Div.	St. Louis, Mo.	50	x
Jack Dallas	District Salesman	San Francisco, Calif.	22	x
Herbert DeBoer	District Salesman	Seattle, Wash.	20	x
James Donahue	District Salesman	Memphis, Tenn.	15	
R. L. Henry	District Salesman	Atlanta, Ga.	15	x
W. W. Knorr	District Salesman	Syracuse, N. Y.	20	x
C. A. McCray	Asst. District Salesman	Philadelphia, Pa.	12	x
R. C. Morgan	District Salesman	New York, N. Y.	25	x
K. K. Pauley	Asst. District Salesman	New York, N. Y.	15	x
Wesley J. Pence	District Salesman	Cleveland, Ohio	10	x
Jack Perkins	Asst. District Salesman	Cleveland, Ohio	5	x
Don Pickard	District Salesman	Minneapolis, Minn.	34	x
A. O. Robertson	District Salesman	Fort Worth, Tex.	25	x
Robert Siler	Asst. District Salesman	Detroit, Mich.	7	
Clifford Siverson	Asst. District Salesman	Los Angeles, Calif.	5	x
EXECUTIVE SPECIAL				
Evelyn Leatherbury	Secretary of Chairman of the Board	St. Louis, Mo.	50	x
Tom Roe	St. Asst. to Chairman of the Board	St. Louis, Mo.	15	x
Vivian Thompson	Secretary to the President	St. Louis, Mo.	10	x

List of key employees of Ralston Purina Company who purchased common stock of the Company at \$70 per share as of Sept. 22, 1950—Continued

Name of employee	Title or payroll classification	Location of employee (by plant, division, or sales office)	Number of shares purchased	Stockholders (self or immediate family (at time of purchase (x)
FINANCIAL				
Earl Alexander	Asst. Mgr., Accounting Dept.	St. Louis, Mo.	20	x
Carl Bacon	Mgr., Budget Division	St. Louis, Mo.	10	x
Melvin Bahle	Accountant	St. Louis, Mo.	15	
Paul Baichly	Division Mgr., Chow Credit	St. Louis, Mo.	5	x
Robert Bliss	Asst., General Consumer Credit	St. Louis, Mo.	10	
S. M. Cole	Mgr., General Cereal Order-Credit Div.	St. Louis, Mo.	10	x
Cottrell Fox	Senior Lawyer	St. Louis, Mo.	5	x
George Gillespie	Accountant	St. Louis, Mo.	15	x
U. I. Harris	Jr. Assistant, Finance	St. Louis, Mo.	4	
Maxine Hasbrouck	Secretary to Treasurer	St. Louis, Mo.	6	x
Forrest Heacock	Mgr., Analytical Section, Sales Record Div.	St. Louis, Mo.	10	x
Julian Hoffman	Asst. Mgr., Auditing Div.	St. Louis, Mo.	10	x
Robert Jasper	Analyst, Budget Division	St. Louis, Mo.	5	x
Fred Jrdell	Senior Lawyer	St. Louis, Mo.	10	x
George Muehthausen	Asst. Mgr., General Consumer Credit and Adjustment Div.	St. Louis, Mo.	5	x
L. B. Murdock	Asst. Secretary, and Manager of Tax and Corporate Dept.	St. Louis, Mo.	33	x
Helen Neiger	Secretary to Vice President	St. Louis, Mo.	6	x
C. W. Scheele	Auditor	St. Louis, Mo.	5	
E. R. Siler	Treasurer	St. Louis, Mo.	93	x
A. M. Stevens	Mgr., General Consumer Credit and Adjustment Division	St. Louis, Mo.	20	x
A. P. Truex	Mgr., Sales Records Division	St. Louis, Mo.	7	x
PERSONNEL				
W. A. Crutcher	Mgr., Planning Division	St. Louis, Mo.	1	
F. W. Huntington	Vice President (Personnel)	St. Louis, Mo.	220	x
A. W. Moise	Director of Personnel	St. Louis, Mo.	150	x
J. E. Schoppin	Mgr., Ad-Service Dept.	St. Louis, Mo.	3	x
Joseph Whealen	Mgr., Office Supply Dept.	St. Louis, Mo.	3	x
PRODUCTION				
ST. LOUIS OFFICE, LABORATORIES, AND RESEARCH FARMS				
T. R. Atchison	Mgr., General Traffic Dept.	St. Louis, Mo.	50	x
Wm. Brew	Mgr., Organic Research Laboratories	St. Louis, Mo.	10	x
D. K. English	Mgr., Engineering Dept.	St. Louis, Mo.	85	x
K. E. Garrison	Division Production Manager	St. Louis, Mo.	200	x
D. L. Grant	Division Production Manager	St. Louis, Mo.	105	x
Rupert Green	Mgr., Research Farm	St. Louis, Mo.	15	x
Douglas Hale	Mgr., Cereal Development Div.	St. Louis, Mo.	15	x
Cecil Hite	Dept. Mgr., Research Farm	St. Louis, Mo.	5	x
H. T. James	Soybean Production Manager	St. Louis, Mo.	10	x
Emmet Johnson	Asst. Mgr., Product Control Dept.	St. Louis, Mo.	50	x
J. F. Jones	Division Production Manager	St. Louis, Mo.	50	x
A. N. Kuelper	Dept. Mgr., Research Farm	St. Louis, Mo.	3	
George T. Lanz	Research Engineer	St. Louis, Mo.	10	x
N. J. Martin	Division Engineer	St. Louis, Mo.	15	x
James McCann	Fire Prevention Engineer	St. Louis, Mo.	5	x
W. B. Millhollen	Dept. Mgr., Research Farm	St. Louis, Mo.	5	
A. J. O'Brien	Mgr. Personnel, Production Dept.	St. Louis, Mo.	60	x
C. R. Perdew	Dept. Mgr., Research Farm	St. Louis, Mo.	5	x
T. J. Potts	Mgr. Analytical Laboratories	St. Louis, Mo.	4	x
R. E. Rowland	Vice President (Production)	St. Louis, Mo.	1,225	x
H. C. Schaefer	Mgr., Special Chow Research	St. Louis, Mo.	30	x

List of key employees of Ralston Purina Company who purchased common stock of the Company at \$70 per share as of Sept. 22, 1950—Continued

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PRODUCTION—CON.				
ST. LOUIS OFFICE, LABORATORIES, AND RESEARCH FORMS—CON.				
W. C. Schofield	Asst. Mgr., Disease Control & Sanitation Research Laboratories	St. Louis, Mo.	25	x
Wm. C. Sherman	Mgr., Biological Research Laboratories	St. Louis, Mo.	3	x
Harold Sleight	Mgr., Farm Management Div.	St. Louis, Mo.	2	x
Clifford Smith	Engineer, Utilities Div.	St. Louis, Mo.	5	x
R. E. Spangler	Asst. Mgr., Research Farm	St. Louis, Mo.	5	
George Steel	Mgr., Safety and Training, Production Department	St. Louis, Mo.	25	x
Wallace Taylor	Mgr., Research Records Dept.	St. Louis, Mo.	2	x
C. A. Tolin	Division Production Manager	St. Louis, Mo.	70	x
John Wear	Mgr., Research Farm	St. Louis, Mo.	10	x
Claude Welch	Mgr., Products Control Dept.	St. Louis, Mo.	75	x
Harold Wilcke	Asst. Director of Research	St. Louis, Mo.	25	x
John Wright	Division Engineer Research	St. Louis, Mo.	22	x
CENTRAL PLANTS				
<i>Bloomington, Ill.</i>				
D. A. Bremer	Power Engineer	Bloomington, Ill.	5	
N. B. Morey	Manager	Bloomington, Ill.	25	x
Bruce Neil	Extraction Plant Supt.	Bloomington, Ill.	10	
John T. O'Conner	Buyer	Bloomington, Ill.	10	x
Dale Rowland	Stock Dept. Manager	Bloomington, Ill.	3	
Vernon Tracy	Millwright Foreman	Bloomington, Ill.	6	
Dunkin Welte	Elevator Supt.	Bloomington, Ill.	10	
F. D. Wiegardt	Traffic Manager	Bloomington, Ill.	5	x
<i>Fort Worth, Tex.</i>				
Chas. DeVol	Order-Credit Manager	Fort Worth, Tex.	4	x
John Turner	Accounting Dept. Mgr.	Fort Worth, Tex.	10	
<i>Iowa Falls, Iowa</i>				
Harold Bell	Order Dept. Manager	Iowa Falls, Iowa	1	
B. A. Beck	Accountant	Iowa Falls, Iowa	10	
Merton Caruth	Chow Foreman	Iowa Falls, Iowa	1	
H. N. Johnson	Manager	Iowa Falls, Iowa	20	x
Arno Tagge	Assistant Manager	Iowa Falls, Iowa	4	x
<i>Kansas City, Mo.</i>				
L. G. Hill	Office Manager	Kansas City, Mo.	6	x
E. G. Hotchkiss	Assistant Manager	Kansas City, Mo.	25	x
Charles Huber	Stock Foreman	Kansas City, Mo.	3	x
Louis Looney	Traffic Manager	Kansas City, Mo.	2	
LeRoy Marolf	Shipping Foreman	Kansas City, Mo.	4	
David Mattson	Maintenance Assistant	Kansas City, Mo.	2	
Lynn E. Stuart	Office Production Asst.	Kansas City, Mo.	5	x
<i>Lubbock, Tex.</i>				
Joe Botik	Traffic Office Manager	Lubbock, Tex.	5	
Eric Carlson	Manager Standards Dept.	Lubbock, Tex.	10	
Donaki Fischer	Asst. Mgr., Standards Dept.	Lubbock, Tex.	5	
<i>Minneapolis, Minn.</i>				
T. M. Donnell	Accounting Dept. Mgr.	Minneapolis, Minn.	2	
Gordon Ekberg	Loading Foreman	Minneapolis, Minn.	2	x
Ervin Lang, Jr.	Buyer	Minneapolis, Minn.	2	
R. L. Ranney	Superintendent	Minneapolis, Minn.	9	x
Folke Olson	Stock Foreman	Minneapolis, Minn.	5	x
A. C. Weberg	Manager	Minneapolis, Minn.	20	x

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PRODUCTION—Con.				
<i>Omaha, Nebr.</i>				
Dewey Agnew	Superintendent	Omaha, Nebr.	5	x
Roy Bernhardt	Stock Foreman	Omaha, Nebr.	2	x
Donald Brown	Order Dept. Manager	Omaha, Nebr.	1	
Lloyd Grover	Production Foreman	Omaha, Nebr.	2	x
William Heebner	Office Manager	Omaha, Nebr.	4	
Woodrow Megel	Night Foreman	Omaha, Nebr.	15	
T. F. Warshawer	General Foreman	Omaha, Nebr.	6	x
W. C. Wells	Manager	Omaha, Nebr.	50	x
<i>St. Louis, Mo.</i>				
Harry Colwell	Manager	St. Louis, Mo.	40	x
Eugene Hurst	Accountant	St. Louis, Mo.	4	
V. F. Kern	Mill Personnel Manager	St. Louis, Mo.	22	x
Fred Neil	Credit Dept. Manager	St. Louis, Mo.	25	x
Edward Nies	Accounting Dept. Manager	St. Louis, Mo.	20	x
<i>Wichita, Kans.</i>				
Frank Earnst	Production Foreman	Wichita, Kans.	5	x
O. P. Sherrill	Manager	Wichita, Kans.	10	x
EASTERN PLANTS				
<i>Buffalo, N. Y.</i>				
Donald Brown	Eastport Whse. Manager	Buffalo, N. Y.	2	
Charles Fisher	Stores Auditor	Buffalo, N. Y.	5	
Wallace Flack	Warehouse Manager	Buffalo, N. Y.	3	
Roger Hampton	Credit Manager	Buffalo, N. Y.	3	
James Hedrick	Superintendent	Buffalo, N. Y.	15	x
William Krieger	Stock Department Mgr	Buffalo, N. Y.	100	x
Phil Rizzo	Personnel Foreman	Buffalo, N. Y.	3	x
Carl Schnitzer	Tinsmith Foreman	Buffalo, N. Y.	30	x
Arthur Skibbe	Mill Production Trainee	Buffalo, N. Y.	10	x
W. P. Thornton	Assistant Buyer	Buffalo, N. Y.	10	x
Kenneth Thur	Traffic Manager	Buffalo, N. Y.	5	x
C. V. Wasmund	Accounting Manager	Buffalo, N. Y.	5	x
<i>Charlotte, N. C.</i>				
James Amos	Superintendent	Charlotte, N. C.	6	x
G. Brauch	Manager	Charlotte, N. C.	40	x
J. D. Martin	Production Foreman	Charlotte, N. C.	1	x
J. J. Warren	Order-Credit Manager	Charlotte, N. C.	3	
<i>Circleville, Ohio</i>				
A. V. Couch	Manager	Circleville, Ohio	35	x
R. T. Friend	Superintendent	Circleville, Ohio	11	x
Marion Steinhauser	Order-Credit Manager	Circleville, Ohio	2	x
<i>Lafayette, Ind.</i>				
R. M. Guenther	Manager	Lafayette, Ind.	50	x
Boyd W. Horn	Warehouse Manager	Lafayette, Ind.	3	
Roy Mansfield	Order Dept. Manager	Lafayette, Ind.	1	
John Quinlan	Mill Production Trainee	Lafayette, Ind.	3	
<i>Miami, Fla.</i>				
Rennie Berry	Superintendent	Miami, Fla.	3	x
James Lepine	Manager	Miami, Fla.	5	x
<i>Nashville, Tenn.</i>				
Joda Austin	Superintendent	Nashville, Tenn.	50	x
J. S. Blunt	Manager	Nashville, Tenn.	75	x
Young Deveraux	Stock and Accounting Mgr.	Nashville, Tenn.	10	

List of key employees of Ralston Purina Company who purchased common stock of the Company at \$70 per share as of Sept. 22, 1950—Continued

Name of employee	Title or payroll classification	Location of employee (by plant, division, or sales office)	Number of shares purchased	Stockholders (self or immediate family) at time of purchase (x)
PRODUCTION—Con.				
<i>Nashville, Tenn.</i>				
Frank Lloyd	Warehouse Manager	Nashville, Tenn.	12	
<i>Richmond, Ind.</i>				
Robert Dugan	General Foreman	Richmond, Ind.	1	
V. H. Frisch	Manager	Richmond, Ind.	10	x
Richard Spencer	Accountant	Richmond, Ind.	2	x
David Toschlog	Order Department Mgr.	Richmond, Ind.	2	x
<i>St. Johnsbury, Vt.</i>				
John MacKenzie	Mill Production Dept.	St. Johnsbury, Vt.	2	
James McKinley	Superintendent	St. Johnsbury, Vt.	10	x
Paul Munkittrick	Mill Office Manager	St. Johnsbury, Vt.	5	x
<i>Tampa, Fla.</i>				
F. J. Davis	Manager	Tampa, Fla.	10	x
H. L. Parr, Jr.	Order-Traffic Manager	Tampa, Fla.	2	x
<i>Wilmington, Del.</i>				
Moses Keller	Warehouse Manager	Wilmington, Del.	2	
D. F. Reeder	Manager	Wilmington, Del.	10	x
PACIFIC-MOUNTAIN PLANTS				
<i>Denver, Colo.</i>				
W. T. Chafee	Manager	Denver, Colo.	10	x
Donald Dornan	Maintenance Foreman	Denver, Colo.	1	
W. C. Horst	Accounting Dept. Mgr.	Denver, Colo.	5	
Laurence Johnson	Mill Office Manager	Denver, Colo.	1	
V. I. McLeod	Office Manager	Denver, Colo.	3	x
<i>Los Angeles, Calif.</i>				
J. P. Andrews	Manager	Los Angeles, Calif.	15	x
Walter J. Grauer	Maintenance Foreman	Los Angeles, Calif.	5	
Walter Kiesler	Traffic Manager	Los Angeles, Calif.	3	x
Robert Moffitt	Laboratory Manager	Los Angeles, Calif.	3	x
<i>Oakland, Calif.</i>				
W. R. Arends	Manager	Oakland, Calif.	100	x
Francis Doyle	Mill Office Manager	Oakland, Calif.	3	
Delbert Jarman	Production Foreman	Oakland, Calif.	1	
O. A. Kern	Mill Foreman	Oakland, Calif.	3	
Edwin Murray	Superintendent	Oakland, Calif.	20	x
R. A. Palmer	Maintenance Foreman	Oakland, Calif.	1	
<i>Pocatello, Idaho</i>				
R. B. Brown	Order Dept. Manager	Pocatello, Idaho	3	
Harry Burkey	General Foreman	Pocatello, Idaho	5	
Harold Ory	Manager	Pocatello, Idaho	10	x
Charles Ward	Superintendent	Pocatello, Idaho	20	x
<i>Stockton, Calif.</i>				
Joseph Grijalva	Superintendent	Stockton, Calif.	10	x
<i>Visalia, Calif.</i>				
M. E. Staud	Manager	Visalia, Calif.	19	x

List of key employees of Ralston Purina Company who purchased common stock of the Company at \$70 per share as of Sept. 22, 1950—Continued

Name of employee	Title or payroll classification	Location of employee (by plant, division, or sales office)	Number of shares pur- chased	Stock- holders (self or immediate family) at time of purchase (x)
PRODUCTION—CON.				
CEREAL AND SANITA- TION PLANTS				
Battle Creek, Mich.				
Arthur Armstrong	Shipping Foreman	Battle Creek, Mich.	3	
Howard Bacon	General Night Foreman	Battle Creek, Mich.	3	x
William Barnes	Millwright Foreman	Battle Creek, Mich.	3	x
Joseph Berger	Asst. Superintendent	Battle Creek, Mich.	21	x
Richard Bromley	Personnel Manager	Battle Creek, Mich.	5	x
A. C. Dunn	Power Foreman	Battle Creek, Mich.	5	
Nelson Heydenberk	Order Dept. Manager	Battle Creek, Mich.	3	x
Richard Lind	Engineer	Battle Creek, Mich.	5	
Neal Nelson	Superintendent	Battle Creek, Mich.	14	x
Billie Seymour	Standards Dept. Manager	Battle Creek, Mich.	2	
Davenport, Iowa				
John Burrows	Manager	Davenport, Iowa	100	x
Edmund Cosby	Laboratory Manager	Davenport, Iowa	1	x
Robert Garwood	Ralston Miller	Davenport, Iowa	3	x
Eugene Hollen	Office Manager	Davenport, Iowa	16	x
Howard Judd	Can Plant Foreman	Davenport, Iowa	2	x
Harvey Keyoth	General Foreman—Cereals	Davenport, Iowa	2	x
Robert Lerigo	Grain Buyer	Davenport, Iowa	3	x
Louis Loufek	Cereal Foreman	Davenport, Iowa	2	x
William Mecker	General Foreman—Chows	Davenport, Iowa	5	x
Oliver Mohr	Chow Foreman	Davenport, Iowa	2	x
George Myers	Mill Production Trainee	Davenport, Iowa	4	x
Arthur Parke	Order Dept. Manager	Davenport, Iowa	2	x
Arnold Paulsen	Chow Loading Foreman	Davenport, Iowa	2	
Raymond Tomlinson	Maintenance Foreman	Davenport, Iowa	3	x
George VanHouten	Personnel Foreman	Davenport, Iowa	25	x
Ralph Vidal	Superintendent	Davenport, Iowa	25	x
J. L. Zimmerman	Order Traffic Manager	Davenport, Iowa	2	x
Ry-Krisp, Minne- apolis, Minn.				
E. K. Furness	Accountant	Minneapolis, Minn.	1	
Richard Partridge	Superintendent	Minneapolis, Minn.	5	x
Sanitation-Farm Supply				
Walter Barenkamp	Production Foreman	St. Louis, Mo.	2	x
A. S. Hemphill	Manager	St. Louis, Mo.	15	x
Fred Homfeldt	Mill Office Manager	St. Louis, Mo.	2	x
Alfred Jenisch	Office Manager	St. Louis, Mo.	5	x
Louis Noel	Superintendent	St. Louis, Mo.	10	x
Joseph Yakopovic	Order-Traffic Manager	St. Louis, Mo.	2	x
PUBLIC RELATIONS				
J. D. Sykes	Vice President (Public Rela- tions)	St. Louis, Mo.	75	x
Otis McIntosh	Director of Public Relations	St. Louis, Mo.	10	x
Marie Schaffer	Secretary to Vice President	St. Louis, Mo.	5	x
SALES				
ST. LOUIS GENERAL STAFF				
Harold Arthur	Assistant, Sales Training	St. Louis, Mo.	10	
Roy Brandenburger	Mgr., Sanitation-Farm Sup- ply Div.	St. Louis, Mo.	100	x
Beryl Campbell	Business Mgr., Sales Dept.	St. Louis, Mo.	40	x
Charles Coyle	Mgr., Custom Mixing and Chow mix Div.	St. Louis, Mo.	20	x

List of key employees of Ralston Purina Company who purchased common stock of the Company at \$70 per share as of Sept. 22, 1956—Continued

Name of employee	Title or payroll classification	Location of employee (by plant, division, of sales office)	Number of shares purchased	Stock- holders (self or immediate family) at time of purchase (1)
SALES—Con.				
C. W. Darby	Asst. Mgr., Sanitation-Farm Supply Div.	St. Louis, Mo.	50	X
Grace Kost	Secy. to Vice Pres., & Gen'l. Chow Sales Mgr.	St. Louis, Mo.	10	
E. M. Putney	Vice President & Gen'l. Chow Sales Mgr.	St. Louis, Mo.	300	X
Elmon Vickers	Mgr., Sales Training Div.	St. Louis, Mo.	50	
S. C. Wise	Mgr., Dealer Money Manage- ment Div.	St. Louis, Mo.	15	X
GRAIN BELT—WESTERN REGION				
<i>California Division</i>				
Redmond Cotter	District Salesman	Los Angeles, Calif.	10	X
Keith Elliott	District Salesman	Los Angeles, Calif.	25	
George Fouke	Asst. Div. Salesmanager	Los Angeles, Calif.	55	X
Clyde Hanley	District Salesman	Los Angeles, Calif.	20	X
Brice Johnson	District Salesman	Los Angeles, Calif.	10	
H. A. Mergendoller	Territory Salesman	Los Angeles, Calif.	7	X
D. C. Purcell	Division Sales Manager	Los Angeles, Calif.	100	X
Ernest Toms	Territory Salesman	Los Angeles, Calif.	14	
Keith Weltze	Mgr., Poultry Chows and Sanitation Products.	Los Angeles, Calif.	40	X
<i>Central States Division</i>				
Benjamin Hall	Territory Salesman	St. Louis, Mo.	10	
Ray Hopewell	District Salesman	St. Louis, Mo.	10	X
John Wunderlich	District Salesman	St. Louis, Mo.	15	X
James Dixon	District Salesman	St. Louis, Mo.	10	X
Horace Boyd	Territory Salesman	St. Louis, Mo.	10	X
K. S. Albrecht	Territory Salesman	St. Louis, Mo.	6	
<i>Missouri—Iowa Division</i>				
Harry W. Allen	District Salesman	Des Moines, Iowa	10	X
C. E. Ferguson	Territory Salesman	Des Moines, Iowa	10	
L. W. Karr	Division Sales Manager	Des Moines, Iowa	100	X
Henry Lyle, Jr.	Territory Salesman	Des Moines, Iowa	5	X
Thane Merrill	Territory Salesman	Des Moines, Iowa	2	X
Don M. Minert	District Salesman	Des Moines, Iowa	4	
Charles Steinhauer	District Salesman	Des Moines, Iowa	25	X
Russell Thomas	District Salesman	Des Moines, Iowa	20	
Harry Van DePol	District Salesman	Des Moines, Iowa	1	
<i>Mountain States Division</i>				
Paul E. Austin	District Salesman	Denver, Colo.	20	X
Howard Blegert	District Salesman	Denver, Colo.	10	
W. O. Garwood	District Salesman	Denver, Colo.	10	X
Faul A. Gerhart	District Salesman	Denver, Colo.	10	
Jack Greenwalt	District Salesman	Denver, Colo.	10	X
Henry Hasse	District Salesman	Denver, Colo.	4	
<i>North Central States Division</i>				
Eric Engman	Territory Salesman	Minneapolis, Minn.	10	X
Glenn Hicks	District Salesman	Minneapolis, Minn.	10	X
Harold Holl	District Salesman	Minneapolis, Minn.	10	X
Glenn Thoeny	Territory Salesman	Minneapolis, Minn.	12	
C. Morris Thorson	District Salesman	Minneapolis, Minn.	3	

List of key employees of Ralston Purina Company who purchased common stock of the Company at \$70 per share as of Sept. 22, 1950—Continued

Name of employee	Title or payroll classification	Location of employee (by plant, division, or sales office)	Num- ber of shares pur- chased	Stock- holders (self or immediate family) at time of purchase (1)
SALES—Con.				
<i>Western States Division</i>				
A. D. Adair	District Salesman	Kansas City, Mo.	25	X
C. C. Armstrong	District Salesman	Kansas City, Mo.	75	X
Jack Benner	District Salesman	Kansas City, Mo.	25	
Dorothy Dieckman	Secy. to Salesmanager	Kansas City, Mo.	10	X
O. C. King	District Salesman	Kansas City, Mo.	25	X
Leonard Metz	District Salesman	Kansas City, Mo.	20	
E. H. Shores	District Salesman	Kansas City, Mo.	8	X
Omar J. Strout	Territory Salesman	Kansas City, Mo.	5	X
James L. Well	District Salesman	Kansas City, Mo.	3	X
GRAIN BELT—WEST- ERN REGION—GEN- ERAL STAFF				
C. R. Bankhead	Mgr., Livestock Chow and Sanitation Products Sales.	St. Louis, Mo.	70	X
J. E. Hoff	Mgr., Poultry Chow and Sanitation Product Sales.	St. Louis, Mo.	50	X
Helen Miller	Secy. to Regional Sales Mgr.	St. Louis, Mo.	15	X
E. B. Pratt	Mgr., Dairy Chow and San- itation Product Sales.	St. Louis, Mo.	25	X
H. J. Sugden	Mgr., Merchandising	St. Louis, Mo.	75	X
Emmett Williams	Asst. Division Salesmanager	St. Louis, Mo.	50	X
SOUTHERN REGION				
<i>Nashville Division</i>				
Forrest W. Crowe	District Salesman	Nashville, Tenn.	15	
G. S. Crowe	District Salesman	Nashville, Tenn.	20	X
Ray B. Davenport	District Salesman	Nashville, Tenn.	3	X
Ira Fears	District Salesman	Nashville, Tenn.	75	X
H. L. Olyniec	District Salesman	Nashville, Tenn.	5	X
James F. Short	District Salesman	Nashville, Tenn.	10	X
J. E. Streetman	Division Sales Manager	Nashville, Tenn.	50	X
J. Howard Watson	Store Manager	Chattanooga, Tenn.	25	X
<i>South Atlantic States Division</i>				
H. G. Bolton	District Salesman	Charlotte, N. C.	10	X
Hollis Franks	District Salesman	Charlotte, N. C.	25	X
Price Hutto	District Salesman	Charlotte, N. C.	5	
B. A. Mangum	District Salesman	Charlotte, N. C.	25	X
Heath B. Marsh	District Salesman	Charlotte, N. C.	25	X
J. V. McAllister, Jr.	District Salesman	Charlotte, N. C.	20	X
R. P. Oliver	Division Sales Manager	Charlotte, N. C.	90	X
Wm. L. Smith	District Salesman	Charlotte, N. C.	25	X
C. O. White	District Salesman	Charlotte, N. C.	25	X
<i>South Central States Division</i>				
J. H. Branch	Division Sales Manager	Memphis, Tenn.	25	X
John H. Clemmons	District Salesman	Memphis, Tenn.	2	X
C. M. Close	District Salesman	Memphis, Tenn.	25	X
W. M. Davidson	District Salesman	Memphis, Tenn.	20	
P. H. Johnson, Jr.	District Salesman	Memphis, Tenn.	15	
J. E. Ruffin	District Salesman	Memphis, Tenn.	5	X
J. R. Stoné	District Salesman	Memphis, Tenn.	10	X
Robert Trice	District Salesman	Memphis, Tenn.	10	X
Hollis Turner	Territory Salesman	Memphis, Tenn.	20	X
T. E. Veitch	District Salesman	Memphis, Tenn.	25	X
Maurice A. Wilson	District Salesman	Memphis, Tenn.	4	X

List of key employees of Ralston Purina Company who purchased common stock of the Company at \$70 per share as of Sept. 22, 1950—Continued

Name of employee	Title or payroll classification	Location of employee (by plant, division, or sales office)	Number of shares pur- chased	Stock- holders (self or immediate family) at time of purchase (x)
SALES—Con.				
<i>Southeastern States Division</i>				
Charles M. Allen	District Salesman	Jacksonville, Fla.	2	x
R. L. Carter, Jr.	District Salesman	Jacksonville, Fla.	25	x
H. I. Deloney	Territory Salesman	Jacksonville, Fla.	10	
L. S. Hamrick	Territory Salesman	Jacksonville, Fla.	10	
C. O. Stephens, Jr.	District Salesman	Jacksonville, Fla.	15	x
<i>Texas Division</i>				
T. H. Buckingham	District Salesman	Austin, Tex.	25	
Robert E. Curtis	District Salesman	Austin, Tex.	2	
R. Lyles Payne	Territory Salesman	Austin, Tex.	15	x
Arch Price	District Salesman	Austin, Tex.	150	x
G. W. Purcell	District Salesman	Austin, Tex.	25	x
John F. Schultz	Store Manager	Garland, Tex.	15	x
L. D. Stevens	District Salesman	Austin, Tex.	20	x
J. B. Windham	District Salesman	Austin, Tex.	10	
SOUTHERN REGION— GENERAL STAFF				
Warren Garrard, Jr.	Poultry Specialist	St. Louis, Mo.	5	x
Carl Leupold	Mgr., Merchandising	St. Louis, Mo.	25	x
J. B. Pullen	Mgr., Livestock Chow Sales	St. Louis, Mo.	30	x
C. R. Severson	Mgr., Poultry Chow Sales	St. Louis, Mo.	25	
EASTERN REGION				
<i>Central Atlantic States Division</i>				
J. D. Fowler	Territory Salesman	Baltimore, Md.	10	x
H. V. Ginn, Jr.	Territory Salesman	Baltimore, Md.	5	x
J. J. Gwaltney	Territory Salesman	Baltimore, Md.	15	x
C. A. Hauck	District Salesman	Baltimore, Md.	25	x
R. S. Keith	District Salesman	Baltimore, Md.	20	x
G. R. Richardson	Division Sales Manager	Baltimore, Md.	100	x
H. Clay Weaver, Jr.	District Salesman	Baltimore, Md.	10	x
A. S. Zerbe	District Salesman	Baltimore, Md.	25	x
<i>Lake States Division</i>				
Cary T. Hartman	District Salesman	Columbus, Ohio	10	x
J. H. Ralston	Division Sales Manager	Columbus, Ohio	50	x
Fred W. Schuler	District Salesman	Columbus, Ohio	23	x
<i>New England States Division</i>				
Stanley O. Baraw	District Salesman	Boston, Mass.	25	x
G. M. Cookman	District Salesman	Boston, Mass.	10	x
Warren L. Gray	District Salesman	Boston, Mass.	3	
Dwight Harlow	District Salesman	Boston, Mass.	25	x
Hollis Humphrey	Territory Salesman	Boston, Mass.	25	x
B. B. Hussey	Territory Salesman	Boston, Mass.	4	x
G. S. Osgood	Territory Salesman	Boston, Mass.	6	x
Thomas O'Toole	Territory Salesman	Boston, Mass.	8	x
Louis Peggam	Dog Chow Specialist	Boston, Mass.	5	x
A. W. Perry	Division Sales Manager	Boston, Mass.	50	x
C. J. Reylek	District Salesman	Boston, Mass.	15	x
Fred M. Smith	Territory Salesman	Boston, Mass.	1	

List of Key employees of Ralston Purina Company who requested an opportunity to purchase common stock of the Company in Sept. or Oct. 1951—Continued

Name of employee	Title or payroll classification	Location of employee (by plant, division, or sales office)	Num- ber of shares pur- chased	Stock- holders (self or immediate family) at time of purchase (x)
PRODUCTION—CON.				
<i>Kansas City, Mo.</i>				
D. H. Elmore	Credit Manager	Kansas City, Mo.	6	x
F. G. Franze	Asst. Secretary and Buyer	Kansas City, Mo.	6	x
David Mattson	Maintenance Trainee	Kansas City, Mo.	2	x
J. C. Skaggs	Manager	Kansas City, Mo.	30	x
Dorothy H. Webb	Accounting Dept. Mgr.	Kansas City, Mo.	4	x
<i>Lafayette, Ind.</i>				
Joseph F. Bonner	Asst. Manager	Lafayette, Ind.	6	x
Kenneth V. Carlson	Credit Manager	Lafayette, Ind.	3	
Ralph M. Guenther	Manager	Lafayette, Ind.	50	x
John K. Quinlan	General Foreman	Lafayette, Ind.	2	x
<i>Minneapolis, Minn.</i>				
R. L. Rainey	Superintendent	Minneapolis, Minn.	20	x
A. C. Weberg	Manager	Minneapolis, Minn.	20	x
Ralph Wittman	Traffic Manager	Minneapolis, Minn.	2	
<i>Nashville, Tenn.</i>				
Joda Austin	Superintendent	Nashville, Tenn.	50	x
John Blunt	Manager	Nashville, Tenn.	50	x
<i>Omaha, Nebr.</i>				
Roy Bernhardt	Stock Foreman	Omaha, Nebr.	2	x
<i>St. Louis, Mo.</i>				
George H. Appel	New Construction Foreman	St. Louis, Mo.	5	x
H. L. Colwell	Manager	St. Louis, Mo.	20	x
Alexander Gardner	Production Foreman	St. Louis, Mo.	10	x
L. D. Varbie	Office Manager	St. Louis, Mo.	5	x
<i>Wichita, Kans.</i>				
Forrest Heacock	Order-Credit Trainee	Wichita, Kans.	15	x
Harold J. King	Maintenance Foreman	Wichita, Kans.	1	
Chas. H. Peterson	Order-Credit Manager	Wichita, Kans.	3	
A. G. Richmond	Manager	Wichita, Kans.	15	x
WESTERN PLANTS.				
<i>Los Angeles, Calif.</i>				
Jerry Andrews	Manager	Los Angeles, Calif.	12	x
Robt. A. Moffitt	Laboratory Manager	Los Angeles, Calif.	2	x
<i>Oakland, Calif.</i>				
W. R. Arends	Manager	Oakland, Calif.	25	x
Francis A. Doyle	Mill Office Clerk	Oakland, Calif.	1	x
D. G. Jarman	Loading Foreman	Oakland, Calif.	1	x
O. A. Kern	Production Foreman	Oakland, Calif.	1	x
Richard A. Palmer	Maintenance Foreman	Oakland, Calif.	2	x
W. G. Raymond	Buyer	Oakland, Calif.	1	x
H. E. Zerweck	Office Manager	Oakland, Calif.	5	x
<i>Visalia, Calif.</i>				
Wm. C. Mecker	Manager	Visalia, Calif.	2	x

List of Key employees of Ralston Purina Company who requested an opportunity to purchase common stock of the Company in Sept. or Oct. 1951—Continued

Name of employee	Title or payroll classification	Location of employee (by plant, division, or sales office)	Number of shares pur- chased	Stock- holders (self or immediate family) at time of purchase (1)
PRODUCTION—CON.				
CEREAL PLANTS				
<i>Battle Creek, Mich.</i>				
Wm. Barnes	Maintenance Foreman	Battle Creek, Mich.	5	x
Nelson Heydenberk	Order Dept. Mgr.	Battle Creek, Mich.	1	x
John Meister	Manager	Battle Creek, Mich.	20	x
CEREAL PRODUCTS DEVELOPMENT				
Douglas Hale	Mgr., Cereal Products Development	St. Louis, Mo.	15	x
CHOW RESEARCH AND PRODUCT CONTROL				
R. M. Bethke	Vice President, Chow Research	St. Louis, Mo.	200	
W. B. Brew	Mgr., Organic Research Laboratories	St. Louis, Mo.	5	x
Charles E. Ellenberger	Chemist	St. Louis, Mo.		x
Herbert A. Graff	Asst. to Mgr., Product Control Dept.	St. Louis, Mo.	4	
Rupert A. Green	Mgr., Eastern Research Farm	Nashua, N. H.	4	x
C. C. Hite	Mgr., Records Div., Research Farm	Gray Summit, Mo.	5	x
M. H. McDonald	Asst. to Mgr., Product Control Dept.	St. Louis, Mo.	50	x
W. B. Mihollen	Mgr., Poultry Div., Research Farm	Gray Summit, Mo.	5	x
C. R. Perdew	Mgr., Dairy Div., Research Farm	Gray Summit, Mo.	20	x
T. J. Potts	Mgr., Analytical Labs	St. Louis, Mo.	3	x
Herbert Schaefer	Mgr., Special Chow Research	St. Louis, Mo.	10	x
Dorothy Schiek	Secy. to Vice Pres. (Research)	St. Louis, Mo.	1	x
Wm. Schofield	Asst. Mgr., Disease Control and Sanitation Res. Laboratories	St. Louis, Mo.	25	x
W. C. Sherman	Mgr., Biological Labs	St. Louis, Mo.	5	x
Herbert J. Smith	Research Consultant	St. Louis, Mo.	20	x
R. E. Spangler	Asst. Mgr., Research Farm	Gray Summit, Mo.	2	x
John M. Wear	Mgr., Research Farm	Gray Summit, Mo.	15	x
Harold L. Wilcke	Asst. Director of Research	St. Louis, Mo.	25	x
Roland Winterfield	Veterinarian	St. Louis, Mo.	5	
R. E. Woodward	Asst. to Mgr., Product Control Dept.	St. Louis, Mo.	5	x
ST. LOUIS GENERAL OFFICE				
L. C. Altmanberger	Mgr., Budget and Cost Div. Production Dept.	St. Louis, Mo.	10	x
Mary Jane Lynch	Secretary to Vice Pres. (Production)	St. Louis, Mo.	2	x
J. R. McCann	Mgr., Fire Prevention Sec., Production Dept.	St. Louis, Mo.	5	x
Claude F. Ross	Engineer	St. Louis, Mo.	5	x
C. B. Smith	Engineer	St. Louis, Mo.	4	x
G. H. Steel	Mgr., Safety and Training	St. Louis, Mo.	55	x
John R. Wright	Division Engineer	St. Louis, Mo.	15	x
SALES				
ST. LOUIS GENERAL STAFF				
C. W. Darby	Asst. Mgr., Sanitation Farm Supply Div.	St. Louis, Mo.	10	x
J. R. Pree	Asst. to Mgr., Sanitation Farm Supply Div.	St. Louis, Mo.	7	x
S. C. Wise	Mgr., Dealer Money Management Div.	St. Louis, Mo.	15	x

List of Key employees of Ralston Purina Company who requested an opportunity to purchase common stock of the Company in Sept. or Oct. 1951—Continued

Name of employee	Title or payroll classification	Location of employee (by plant, division, or sales office)	Number of shares purchased	Stockholders (self, or immediate family) at time of purchase (X)
SALES—CON.				
EASTERN REGION				
<i>General Staff</i>				
John Gearhart	Dairy Specialist	Columbus, Ohio	10	
H. V. Ginn	Dairy Specialist	Newark, Del.	5	X
John Hall	Manager, Training	St. Louis, Mo.	10	
A. H. Leonard	Mgr., Livestock, Chow and Sanitation Product Sales	St. Louis, Mo.	15	X
Irene Pitts	Secy. to Regional Sales Mgr.	St. Louis, Mo.	10	X
<i>Central Atlantic Division</i>				
F. L. Wickham	District Salesman	Baltimore, Md.	25	X
<i>Lake Division</i>				
J. B. Wilson	District Salesman	Columbus, Ohio	100	X
<i>New England Division</i>				
Wm. H. Hutchings	District Salesman	Boston, Mass.	25	X
Eric B. Johnson	District Salesman	Boston, Mass.	20	X
John Sweeney	Territory Salesman	Boston, Mass.	5	X
<i>North Atlantic Division</i>				
George Ash	District Salesman	Buffalo, N. Y.	10	X
Michael Barlow	District Salesman	Buffalo, N. Y.	5	
Floyd R. Blaser	Territory Salesman	Buffalo, N. Y.	20	X
C. D. Fales	Salesmanager	Buffalo, N. Y.	100	X
H. I. Frederick	District Salesman	Buffalo, N. Y.	30	X
Cari Frieholm	District Salesman	Buffalo, N. Y.	50	X
J. F. Hallinan	District Salesman	Buffalo, N. Y.	25	X
D. R. Hodgins	District Salesman	Buffalo, N. Y.	15	X
John B. Johnson	District Salesman	Buffalo, N. Y.	100	X
Wm. O. Matteson	District Salesman	Buffalo, N. Y.	10	
Clinton Meyer	District Salesman	Buffalo, N. Y.	20	X
Lee Van Atta	District Salesman	Buffalo, N. Y.	50	X
S. M. Wooley	District Salesman	Buffalo, N. Y.	35	X
<i>Shore Division</i>				
O. M. Avis	Territory Salesman	St. Louis, Mo.	10	X
J. A. Correll	District Salesman	St. Louis, Mo.	44	X
J. D. Davis	Territory Salesman	St. Louis, Mo.	40	X
Mc V. DeAntonellis	District Salesman	St. Louis, Mo.	10	X
C. M. Dryden	Territory Salesman	St. Louis, Mo.	50	X
C. J. Reylek	District Salesman	St. Louis, Mo.	50	X
Meade Summers	Salesmanager	St. Louis, Mo.	5	X
GRAINBELT REGION				
<i>Missouri-Kansas Division</i>				
H. V. Allen	District Salesman	Kansas City, Mo.	10	X
A. H. McDonald	District Salesman	Kansas City, Mo.	40	X
PACIFIC REGION				
D. C. Purcell	Regional Salesmanager	Los Angeles, Calif.	50	X

List of Key employees of Ralston Purina Company who requested an opportunity to purchase common stock of the Company in Sept. or Oct. 1951—Continued

Name of employee	Title or payroll classification	Location of employee (by plant, division, or sales office)	Number of shares purchased	Stock- holders (self or immediate family) at time of purchase (x)
SALES—Con.				
SOUTHERN REGION				
<i>South Central Division</i>				
J. H. Branch	Salesmanager	Memphis, Tenn.	25	x
P. E. Veitch	District Salesman	Memphis, Tenn.	50	x
<i>Nashville Division</i>				
G. S. Crowe	District Salesman	Nashville, Tenn.	50	x
Ralph Jarrett	District Salesman	Nashville, Tenn.	50	x
<i>South Atlantic Division</i>				
H. G. Bolton	District Salesman	Charlotte, N. C.	20	x
Hollis Franks	District Salesman	Charlotte, N. C.	37	x
C. O. White	District Salesman	Charlotte, N. C.	50	x
<i>Export Division</i>				
H. A. Scott	Salesmanager	St. Louis, Mo.	20	x
WESTERN REGION				
<i>Texas Division</i>				
Arch Price	District Salesman	Austin, Tex.	100	x
R. C. Scott	District Salesman	Austin, Tex.	50	x
CHECK-R-BOARD STORES				
<i>General Staff</i>				
John Huffman	Mgr., Construction & Equipment Section.	St. Louis, Mo.	50	
NEW ENGLAND STORES				
R. T. Alden	Store Mgr., Ellsworth, Me.	St. Johnsbury, Vt.	5	
Clifton England	Store Mgr., Orleans, Vt.	St. Johnsbury, Vt.	8	x
Jane Eikat	Asst. to Store Mgr., Norwich, Conn.	St. Johnsbury, Vt.	5	
Roger Plummer, Jr.	Store Mgr., Fitchburg, Mass.	St. Johnsbury, Vt.	2	
Bernard L. Young	Store Mgr., Portland, Me.	St. Johnsbury, Vt.	5	x
SOUTHERN STORES				
W. W. Holloway	Store Mgr., East Point, Ga.	St. Louis, Mo.	10	x
NORTHERN STORES				
P. L. Atkinson	Store Mgr., Watertown, N. Y.	St. Louis, Mo.	50	
John L. Brack	Store Mgr., Traverse City, Mich.	St. Louis, Mo.	2	
Robert J. Kaiser	Salesman—Traverse City, Mich.	St. Louis, Mo.	10	
Harold Scott	Store Mgr., Cobleskill, N. Y.	St. Louis, Mo.	50	
F. D. Smith	Mgr., Northern Division	St. Louis, Mo.	50	x
Gaines Smith	Store Mgr., Ashland, Ky.	St. Louis, Mo.	5	
SALES				
ST. LOUIS GENERAL STAFF				
H. Dorsey Guthrie	Mgr., Sanitation and Farm Supplies, Southern Region.	St. Louis, Mo.	10	x
Carl Leupold	Mdse. Mgr., Southern Region	St. Louis, Mo.	10	x

List of key employees of Ralston Purina Company who requested an opportunity to purchase common stock of the Company in Sept. or Oct. 1951—Continued

Name of employee	Title or payroll classification	Location of employee (by plant, division, or sales office)	Number of shares purchased	Stockholders (self or immediate family) at time of purchase (x)
SALES—Cen. GRAIN BELT—WESTERN REGION Central States Division				
Herbert B. Morris	District Salesman	St. Louis, Mo.	60	x
SOUTHERN REGION Nashville Division				
Ira L. Fears	District Salesman	Nashville, Tenn.	100	x

PRETRIAL CONFERENCE EXHIBIT G

Sales of special stock, 10/1/47

(Certificates E 6001 through E 6264) Price: \$47.50

Name	Shares bought	Shares sold	Date sold	Sale price
Otis P. Sherrill	20	10	11/4/48	-
*Wilfred J. Riley and Mary V. J. Riley, JTRS	30	30	5/19/48	-
*Buford H. Roberts	25	25	8/4/49	54
*Glenn C. Pittenger and Mildred S. Pittenger, JTRS	10	10	5/31/49	50
*David E. Ward	50	50	1/26/50	81
*James Wilkes Mathers and Ruth Catherine Louise Mathers, JTRS	10	10	1/16/50	81
***Charles Will Darby and Elizabeth B. Darby, JTRS	10	10	1/16/50	80
Gibson Graham and Mrs. Eleanor I. Graham, JTRS	20	20	9/6/49	-
**Leonard G. Ray and Mrs. Ruth I. Ray, JTRS	25	25	12/1/49	-
Louis A. Clements	10	10	7/21/48	-
*Virgil O. Wodicka and Helen K. Wodicka, JTRS	10	10	3/12/48	-
*Leon M. McCorkle	20	20	8/26/48	50
Mrs. Edith Kosfeld	12	12	5/2/50	75
*John T. O'Conner and Mrs. Velma E. O'Conner, JTRS	10	10	3/30/51	-
*J. Keith Lungren and Mrs. Mary L. Lungren, JTRS	35	35	9/12/50	77
*Donald C. Joy and Mrs. Vera L. Joy, JTRS	20	20	9/21/50	77
*J. T. Weaver and Mrs. Margaret E. Weaver, JTRS	10	10	7/6/50	80½
Total		317		

*Left Purina.

**Retired.

***Left Purina at time of sale, subsequently reemployed.

PRETRIAL CONFERENCE EXHIBIT H

Sale of special stock, 9/30/48

Ralston Purina Company (Treasury Account) stock (Certificates E 6833 through E 6846, E 6850, E 6854 through E 6860, and E 6863 through E 6867). Price: \$50.00

Name	Shares bought	Shares sold	Date sold	Sale price
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No shares sold.

PRETRIAL CONFERENCE EXHIBIT I

Sale of special stock, 10/3/49

[New Issue Stock]

(Certificates E 8401 through E 8851) Price: \$35.00

Name	Shares bought	Shares sold	Date sold	Sale price
*Harold Shelburne	50	40	4/11/50	
*John J. Southcott, Jr., and Mrs. Barbara M. Southcott, JTRS	2	2	10/24/50	
Clifford B. Smith and Emma Irene Smith, JTRS	6	1	2/6/51	
*John T. O'Conner and Mrs. Velma E. O'Conner, JTRS	10	10	3/30/51	
**Adelina E. Kuehn and Eleanor A. Kuehn, JTRS	5	5	3/21/51	80
*Eleanor A. Kuehn and Adelina E. Kuehn, JTRS	5	5	3/21/51	80
*Carl W. Anderson and Idabelle Corella Anderson, JTRS	5	5	6/1/51	79
*W. W. Ward and Helen G. Ward, JTRS	15	15	9/10/51	79½
**George J. Myers	6	6	2/20/51	81
Total		80		

*Left Purina.

**Bought home.

PRETRIAL CONFERENCE EXHIBIT J

Sale of special stock, 9/22/50

(Certificates E 9001 through E 10029 also E 10036, E 10037, E 10047)
Ralston Purina Company New Issue Stock Price: \$70.00

Name	Shares bought	Shares sold	Date sold	Sale price
*Keith B. Elliott and Mrs. Edwina Elliott, JTRS	25	25	4/9/51	78
*John T. O'Conner and Mrs. Velma E. O'Conner, JTRS	10	10	6/19/51	81
**George J. Myers	4	4	2/20/51	80
*Lester G. Hill and Carrie R. Hill, JTRS	6	6	5/2/51	80
Total		45		

*Left Purina.

**Bought home.

PRETRIAL CONFERENCE EXHIBIT K

COPY OF RESOLUTION DATED SEPTEMBER 11, 1951, REFERRED TO IN
THE FIRST PARAGRAPH OF PRETRIAL STIPULATION

"Resolved, that Mr. Donald Danforth, Mr. Lewis B. Stuart or Mr. E. R. Siler be and each of them is hereby authorized to sell at \$80 a share, not to exceed 10,000 shares of the authorized but unissued common stock of Ralston Purina Company to employees of Ralston Purina Company or Ralston Purina Company of Canada, Ltd., who shall, without any solicitation by the Company or its officers or employees, inquire of any of them as to how to purchase common stock of Ralston Purina Company; provided, however, that if such officer is able to purchase such stock for less on the open market he is authorized to purchase stock for such employee on the open market at such lesser price; provided further that this authorization shall terminate December 31, 1951."

Total compensation ranges of Ralston employees shown on the lists of stock purchased in 1947-48-49-50 and stock requested in 1951

Year of list	High	Low
1947	\$66,500.00	\$3,195.00
1948	55,000.00	4,725.00
1949	80,000.00	2,700.00
1950	71,000.00	2,435.00
1951	43,000.00	3,107.00

[CAPTION]

Memorandum

This action, initiated by the Securities and Exchange Commission, resulted in a preliminary injunction, by agreement, restraining defendant, Ralston Purina Company, from proceeding with the offering and sale of its \$25.00 par value common stock. Plaintiff, after trial, seeks to have the injunction made permanent.

Section 5 (a) of the Securities and Exchange Act (15 U. S. C. A. § 77e) prohibits the offer or sale of any security in interstate commerce or through the mails unless a registration statement as to such security is in effect with the Securities and Exchange Commission, plaintiff in this action. Section 4 (1) of the Act (15 U. S. C. A. § 77d (1))* provides that transactions by an issuer not involving any public offering are exempt from the provisions of Section 5 (a) (1) of the Act. Whether the stock issue in question was public or private is the issue in this case. Defendant claims it was not a public offering.

There is no conflict in the evidence. Defendant was organized in 1894. It had a small beginning. It manufactures and sells mixed feeds for poultry and livestock, and cereal for human consumption. It now has thirty-six feed mills, six soybean processing plants, three cereal plants, many warehouses and grain elevators and seventy-nine retail feed and farm supply stores. Approximately seven thousand people are employed. Net sales for the fiscal year ending September 30, 1951 exceeded \$340,000,000.

Since 1942 the company has offered stock ownership to employees who could meet its test of "key employees". The company has from time to time paid a "President's bonus" to certain "key employees", and such employees, with rare exceptions, used the bonuses to purchase stock offerings made to them.

* "The provisions of Section 77e of this title shall not apply to any of the following transactions: (1) * * * transactions by an issuer not involving any public offering. * * *

Defendant's Executive Vice President gave the following as explanatory of what defendant means by the term "key employees", i. e., "those who were officers, department heads, assistants to a department head, or other employees whom the Company considered eligible for future promotion to a position of greater responsibility in an administrative, production, personnel, advertising, sales or research department—one who was ambitious and likely to develop and grow with the Company's business and who exercised special influence upon other employees and was a leader and advisor to other employees and was sympathetic to management."

To carry out its purpose of selling stock to "key employees" the defendant made known to its various managers and heads of departments a proposed stock offering. There was never any solicitation. The managers were depended upon to select "key employees" in their various departments, below their rank, after the company executives had conferred with the managers and outlined the matters to be considered in making selections. After the selections were made a notice was given of the stock offering. From the exhibits offered we conclude that since 1947, with total employees of approximately 7,000, purchases were made in 1947 by 243 employees; in 1948 by 20 employees; in 1949 by 414 employees; in 1950 by 411 employees. For 1951 there were applications to purchase by 165 employees. It is the latter sales that were stopped by this litigation. There were applications made by employees to whom no sales were made. There were offerings made each year to a larger number than ultimately purchased. Offerings were made orally. It is conceded the mails were used in carrying out this plan. Defendant kept no record of those to whom offerings were made and who did not purchase. It estimates the offering for the year 1951 to be approximately 500 "key employees", or 5 to 8% of the total employees.

The defendant's common stock is unlisted but there are over-the-counter sales to the public. Sales to "key employees" compare with estimated sales to the public, based on month of September for each year, as follows:

Year	Over-the-counter yearly sales (based on Sep tember sales of each year)	Yearly sales to "key" employees
1947	8,844	243
1948	1,200	1,120
1949	3,204	10,000
1950	8,544	9,659
1951	11,184	2,769 applications

One reason given by defendant for selling stock direct to its "key employees" was, if they attempted to make like purchases over the counter, such demand would force the price up artificially.

Defendant at no time has sold stock to its employees to procure needed finances. Such sales were only for purpose of securing stock ownership by certain selected employees. In 1945 the defendant sold \$10,000,000 in preferred stock to the public, by a public offering, after proper registration with the plaintiff. There is no evidence of any complaint from plaintiff or any stockholder, preferred or common, as to the character of financial statements of defendant.

Employees purchasing stock during the following years sold their stock thereafter as follows:

1947-----	17
1948-----	None
1949-----	9
1950-----	4

Sale of stock by employees, represented above, in most instances was by persons who left defendant's employ at time of sale.

Since 1945 defendant has sent to all stockholders its annual balance sheet statement. This statement was filed with the Commission. The defendant printed bimonthly bulletins. These were sent to all the branches, warehouses and stores and they were either posted or made available to all employees. Such bulletins showed the amount of tonnage which the company was currently producing and selling. Profit and loss statement was not shown by these bulletins.

The resolution providing for the stock issue in question, similar to resolution providing for stock offerings in previous years, is as follows:

"Resolved, that Mr. Donald Danforth, Mr. Lewis B. Stuart or Mr. E. R. Siler be and each of them is hereby authorized to sell at \$80 a share, not to exceed 10,000 shares of the authorized but unissued common stock of Ralston Purina Company to employees of Ralston Purina Company or Ralston Purina Company of Canada, Ltd., who shall without any solicitation by the Company or its officers or employees, inquire of any of them as to how to purchase common stock of Ralston Purina Company; provided, however, that if such officer is able to purchase such stock for less on the open market he is authorized to purchase stock for such employee on the open market at such lesser price; provided further that this authorization shall terminate December 31, 1951."

No common stock was ever sold to any employee except those who were designated as "key employees." In 1951, when the managers and plant and department heads were advised of the stock being made available, in accord with the defendant's custom, only "key employees" were advised by manager and plant and department heads that such stock would be available for purchase by them.

Payroll classification of employees, determined by defendant at various times of stock offerings as being "key employees" are: artist; copywriter, maintenance foreman; maintenance trainee; order-credit trainee; mill office clerk; loading foreman; chemist; research consultant; veterinarian; assistant in animal pathological department; secretary to production manager; stenographer to staff manager; clerical assistant to accounting manager; electrician-maintenance department; supervisor, mail section; millwright foreman; production trainee; shipping clerk, traffic clerk; and stock clerk.

Plaintiff's principal argument is based on committee reports and administrative rulings of plaintiff, as to the meaning that should be ascribed to the word "public" in the exemption clause of Section 4 (1) of the Act. We are urged to follow these extra-statutory pronouncements in determining the meaning of the statute. The practice does not appeal to us. We think it should be resorted to only in cases of extreme necessity when the recognized rules for statutory construction fail of their purpose. Language used by Congressional Committees is often loose. That observations of Congressional Committees will thereafter be used by the Courts to determine the meaning of laws passed by Congress cannot be said to have been in the minds of the Committee at the time of their pronouncements. Congress does not purposely pass a vague law. Committee declarations are not intended to be used for the purpose of determining the meaning of Congressional Acts by Congress. They do not represent any expression of either House of Congress. Committees of the two Houses may not agree upon the conclusions to be placed upon their actions. The latter is the case here. In 1934 the Securities Act was amended. At that time a proposal was made in the House to exempt stock issue sold to employees of the issuer. In Conference Report the House managers of the bill stated as a reason for rejection of the amendment:

"(employees) may be in as great need of the protection afforded by availability of information concerning the issuer for which they work as are most other members of the public."

But when the same amendment was before the Senate the author of a like Senate amendment had the following colloquy with a member of the Senate Committee which considered the amendment:

"I agree that when the Senator submitted his proposed amendment it struck me as being entirely reasonable, fair and just. I took it that way. And I can see what he proposes in a favorable light. But when the bill went to conference the House Conferees insisted that there was, first, no reason for the amendment"

"The contention was, and it seems to me that it is almost unanswerable, that an offering to employees solely, as provided in the Senator's amendment, is not a public offering. The argument was made that there was no occasion for this amendment, because under the law there would not be a public offering when the stock was offered simply and solely to employees. And that was the effect of the Senator's amendment. His amendment is limited, as will be seen by its language, which is—

"The term 'public offering' shall not be deemed to include an offering made solely to the employees"

"I do not believe under the law it really does."

Senator HASTINGS. May I inquire—and I make this inquiry because it may be helpful in the future—whether the Senator can say that that was the judgment of the conference itself, or is he speaking only for himself?

Senator FLETCHER. Yes; that is the judgment of the conference itself; that there is no reason why employees should not subscribe for stock, and stock be subscribed for by employees under the law as it is. And certainly there is no question in the world that the Commission has the authority to declare that such an offering would not be a public one."

The proceedings of the two Houses of Congress are in such conflict as to furnish no ground to recommend them as a help in determining the meaning of the Act before the Court.

In 1933 the Federal Trade Commission issued a release to the effect—"Where a substantial number of persons is involved it would seem imprudent to rely on the exemption of Section 4 (1) of the Act." Then in 1935 the plaintiff issued a release and again stressed numbers as determinative whether a stock offer by a corporation is private or public. And so plaintiff's brief informs us that it has consistently interpreted the term "public offering" as contained in the exemption clause to mean an offering to a substantial number of offerees. We find nothing in the statute and statutory scheme making number of offerees the sole test as to whether a stock offering is public or private.

The exemption statute was before the Court of Appeals for the Ninth Circuit in *Securities and Exchange Commission v. Sunbeam Gold Mines Co.*, 95 F. 2d 699 (1938). In the *Gold Mines* case the stock offering was made to all stockholders of two goldmining companies that were consolidating. The sole purpose of the offering was to raise finances to effect a consolidation. On the facts the authority gives little aid in the present case. But the opinion calls for serious consideration because of the position taken by the plaintiff as to the proper interpretation of the exemption statute—a position that is not now urged before this Court. We believe it far more plausible to believe that Congress has accepted the reasoning of the *Gold Mines* case as to the meaning of the statute and as the reason for failure to amend the Act and clarify its meaning, than that Congress accepted the administrative ruling as the reason for its nonaction, as urged by plaintiff.

Based on the *Gold Mines* case we conclude defendant relying on the exemption has the burden of proof. The statute is designed to protect the investing public by providing "full and fair disclosure" and information as to the securities to be offered, which shall be available to the public and upon which it can base a decision as to purchase of stock offering. Therefore an exception to the general policy of the statute must be strictly construed against the claimant of the exemption. That plaintiff has conditioned registration on such terms and conditions as to make it expensive and time-consuming for defendant cannot be made of concern to this Court. Our province is only to interpret the law. Its reasonableness is not before us.

In the *Gold Mines* case the Court adopted certain norms of construction of the exemption in the Act which were there urged by the plaintiff:

"* * * the word public is one familiar to everyone, but of the most varied and indefinite connotations. In its broadest meaning the term 'public' distinguishes the populace at large from groups of individual members of the public segregated because of some common interest or characteristic. Yet such a distinction is inadequate for practical purposes; manifestly, an offering of securities to all red-headed men, to all residents of Chicago or San Francisco, to all existing stockholders of the General Motors Corporation or the American Telephone & Telegraph Company, is no less 'public,' in every realistic sense of the word, than an unrestricted offering to the world at large. Such an offering, though not open to everyone who may choose to apply, is none the less 'public' in character, for the means used to select the particular individuals to whom the offering

is to be made bear no sensible relation to the purposes for which the selection is made. For the purposes of an offering of securities red-headed men, residents of San Francisco, and stockholders of General Motors are as much members of the public as their antithetical counterparts. To determine the distinction between 'public' and 'private' in any particular context, it is essential to examine the circumstances under which the distinction is sought to be established and to consider the purposes sought to be achieved by such distinction."

We think this line of reasoning more in harmony with the statute than the arbitrary one of numbers, wholly absent in the *Gold Mines* case, and which plaintiff now asks this Court to adopt. An examination of the "circumstances under which the distinction is sought to be established" by the defendant and "the purpose sought to be achieved by such distinction" should be examined. We also consider "is there a sensible relation to the purpose for which the selection" is made by the employer?

The circumstances of the offering under examination are plainly and frankly spread before the Court. They involve no promotion or cash-raising scheme by the defendant. They are the same circumstances that have surrounded a like activity for several years past. Defendant has followed a consistent policy of securing its managerial and executive personnel by promotion within the organization. Without competent management any business must fail. The success of defendant testifies to the soundness of its policy. It desires to continue the policy.

The sole purpose of the "selection" is to keep part stock ownership of the business within the operating personnel of the business and to spread ownership throughout all departments and activities of the business. No greater tie, to secure loyalty, could be forged between the corporation and its employees than part ownership in the business by the employees. It is an appeal to the employees' self-interest, but a commendable one. Defendant could confine stock offerings to those high in the executive positions but that would not accomplish its long range purpose of bringing from the ranks those who represent good prospects for company management. Defendant chooses to call such prospects, together with those who are in executive positions, "key employee." Doubtless the name was suggested by the thought that such character of employees is the key to the company's success, past and present. We have examined defendant's definition of "key employee" and see nothing hypocritical or evasive in it. We do not need expert testimony to understand the purpose of the definition and its

application to a private enterprise. Both in accord with sound business policy. Under the definition it calls for an observation of employees whom the company considers "eligible for future promotion to a position of greater responsibility" in the various departments. They consider whether the prospect is "ambitious and likely to develop and grow with the Company's business" and who has a beneficial or "special influence" among other employees, and one who is "sympathetic to management" and has the interests of the employer at heart. No better way has been suggested to find "key employees," that is employees who look like good prospects as part owners to carry on and promote the success of the company. What motive could the defendant have for such a policy other than the one announced? None has ever been suggested. The purpose of the selection bears a "sensible relation" to the class chosen.

We take it from the tenor of plaintiff's brief that if defendant had restricted its selection of "key employees" to less than 100, plaintiff would have no objections to the stock-offering as being a private one. Thus the issue is narrowed—is the stock-offering a public one because made to not to exceed 500 rather than not to exceed 100, out of 7,000 employees? To rule that it is would result in an arbitrary holding that any stock-offering made to offerees in excess of 100 would be public. Neither the statute nor any Congressional report suggests such a standard. It appears to have originated solely with plaintiff. But then what becomes of the test urged by plaintiff and set forth and approved in the *Gold Mines* case? Plaintiff may abandon the "common interest" and "sensible relation" doctrine but the Court of Appeals decision still stands binding on this Court unless clearly erroneous. We do not think it is clearly erroneous.

If the circumstances of this offering were such as even to suggest this corporation was taking advantage of its employees by either a false financial statement or failure to give any, we would have a different situation. If the circumstances surrounding the offering indicated it was being used to raise finances, we would have a different situation.** Defendant issues yearly financial statements.— They go to all stockholders. They are filed with the plaintiff. The request to purchase stock for the year 1951 (Pre-Trial Exhibit F) is typical of the previous sales. We find five representatives of the financial department making applications to purchase stock. Their ap-

**\$35,918,134.00 in earnings were retained for use in business as of 1951; total assets \$121,190,602.00; stockholders' equity \$78,173,030.00; cash on hand and in bank \$10,297,569. (See Def. Ex. M.)

plications are in amounts proportional to the applications in other departments. Various departments are represented in the applications and the applications for the various departments we find usually are confined to those in a supervisory, managerial or executive capacity. Salesmen from the various divisions represent an exception. Such a diversification of stock ownership cannot be said to lack "sense" from the corporate viewpoint.

The circumstances of the plan of offering stock to "key employees" lacks the slightest suggestion of a device to evade the law invoked by plaintiff. The offering has a lawful purpose entirely independent from the objective of the law.

Plaintiff emphasizes the failure of the resolution by terms to confine the offering to "key employees." This is the same type of resolution defendant has used for like offerings in previous years. The resolution is not the offering—it is authority for the offering. What was done—the facts regarding the manner and reason for the offering, rather than the resolution, show the nature of the offering to be private. Those facts are not in dispute.

We find the stock offering described in the complaint is private and not public under the terms of the Act.

We conclude that the offering is exempt from the provisions of the Act.

Decree may be submitted dismissing plaintiff's complaint and dissolving the temporary injunction.

(S) RUBEY M. HULEN,
Judge.

[CAPTION]

Judgment

This cause having been taken under submission and the filing of all briefs having been heretofore completed and the Court being now fully informed, doth find the issues in favor of the defendant and against the plaintiff and Adjudge that the plaintiff take nothing under its complaint and that the cause be and is hereby dismissed. And the Court doth further Order, Adjudge and Direct that the preliminary injunction heretofore entered herein on October 24, 1951 be and is hereby dissolved.

RUBEY M. HULEN,
Judge.

Endorsed:
Filed Feb. 14, 1952.

JAMES J. O'CONNOR,
Clerk.

[CAPTION]

Motion for restoration of preliminary injunction pending appeal

Now comes the Securities and Exchange Commission, plaintiff in the above-entitled cause, and moves the Court to restore the preliminary injunction heretofore entered by consent in this cause on October 24, 1951, pending the appeal herein from the judgment dismissing plaintiff's complaint and dissolving said preliminary injunction.

The grounds for this motion are:

(1) No harm would result to the defendant by reason of the restoration of the preliminary injunction in view of the defendant's admissions and the Court's findings that the financing in question is not necessary for the economic well-being of the defendant; and

(2) If the defendant should proceed with the offering of its securities which is sought to be enjoined and if the final judgment herein is subsequently reversed on appeal, the employee-purchasers of defendant's securities who might wish to rescind their purchases would find it difficult and embarrassing to do so in view of their employment by defendant although it is normally true that they would, under such circumstances, have the right to such rescission.

Dated February 20, 1952.

(S) Thomas B. Hart,
THOMAS B. HART,

(S) Alexander J. Brown, Jr.,
ALEXANDER J. BROWN, Jr.,

(S) Robert J. Sugrue,
ROBERT J. SUGRUE,

*Attorneys for the Securities and Exchange Commission,
105 West Adams Street, Chicago, Illinois.*

(S) Louis Loss,
LOUIS LOSS,

*Associate General Counsel, Securities and Exchange
Commission, Washington, D. C.*

[CAPTION]

Stipulation

It is hereby stipulated and agreed by the Securities and Exchange Commission, plaintiff, and Ralston Purina Company,

defendant, by their respective counsel, that pending a determination of plaintiff's appeal of the judgment entered herein by the Court on February 14, 1952, defendant will not resume the offering of securities to its employees commenced in September 1951, pursuant to the resolution of its board of directors adopted on September 11, 1951, and will not sell to its employees any of its securities pursuant to said resolution.

Stipulated and agreed this 20th day of February 1952.

(S) Thomas B. Hart,

THOMAS B. HART,

(S) Alexander J. Brown, Jr.,

ALEXANDER J. BROWN, Jr.,

(S) Robert J. Sugrue,

ROBERT J. SUGRUE,

*Attorneys for the
Securities and Exchange Commission.*

THOMAS S. MCPHEETERS,

Attorney for Defendant.

[CAPTION]

Memorandum for clerk

Plaintiff's motion for order Restoring Preliminary injunction pending Plaintiff's appeal herein filed and parties having stipulated as per stipulation filed by leave of Court, plaintiff's motion for order restoring preliminary injunction is denied:

ROBERT J. SUGRUE,

Attorney for Plaintiff.

THOMAS S. MCPHEETERS,

Attorney for Defendant.

NARRATIVE OF TRIAL PROCEEDINGS ON DECEMBER 28, 1951, BEFORE
HONORABLE RUBEY HULEN

Mr. Sugrue appearing for the plaintiff offered all of the pre-trial conference stipulations except paragraph 7 in evidence as well as Exhibit A which is referred to in paragraph 7, and the plaintiff rested.

Thereafter the defendant through Mr. McPheeters offered in evidence in its behalf the other stipulation, paragraph 7, and Exhibit A attached. Whereupon Mr. Sugrue objected to the admission of that exhibit on the ground that it was irrelevant and immaterial. The court overruled the objection. (See Defendant's exhibit A, Pretrial exhibit A, page 41.)

Lewis Stuart, a witness of lawful age, sworn and examined on behalf of the defendant, testified on direct examination:

"My name is Lewis Stuart. I live at 22 Fair Oaks, St. Louis County. I am a vice president and secretary and a member of the board of directors of the Ralston Purina Co. I have been associated with Ralston Purina Co. since 1919. I was first with the Operating Department as operator, then as Mill Manager, later becoming treasurer of the company, and in 1942 I became the Chief Financial Officer and Director. The Ralston Purina Company is a Missouri corporation incorporated in 1894. The net sales of the company for the fiscal year ending September 30, 1951, was slightly in excess of \$340,000,000. These sales consisted primarily of chows and mixed feeds for poultry and livestock; soy bean oil; sanitation and farm supply products; and cereals for human consumption.

"Ralston Purina operated 36 feed mills, 6 soy bean processing plants, and 3 cereal mills. It also operates many warehouses and elevators, some of which are owned, but most of which are leased by the company. It operates 7,000 retail concerns and employs approximately 7,000 people. It has grown from a small beginning rather steadily, but more rapidly since 1940, and the most rapid growth has been since the last war. 79

"There has been a great continuity in the management of Ralston Purina. Mr. William H. Danforth, the founder of Ralston Purina, is still active in its management. Most of our officers have been with the company their entire business lives. Our company follows the policy of promoting its personnel from within.

"The first record that I am certain of as to sales of Ralston Purina stock to our employees was in 1911. From the inception of our company we have had a policy of encouraging stock ownership, particularly by our key employees. Employee interests in the purchase of the stock has at least partially been satisfied on a number of occasions by making stock available for purchasing by our employees. In 1942 we sold 1,269 shares of our common stock to 59 key employees and in 1943 we sold 2,000 shares of our common stock to 109 key employees. The next few years we did not sell any stock, because most of our key employees owned stock in the company but with the expansion of the business and its personnel we again offered stock in 1947. In that year we sold 6,984 shares to 243 key employees. We sold stock in 1947, 1948, 1949 and 1950 and, of course, the demand for stock in 1951 was frustrated as a result of this action." Reference here was made to the pre-trial stipulation pages 11-44 where the details of such sales were set forth.

Mr. Stuart said that after the present action was instituted Ralston Purina did not proceed any further with the sale of stock to its employees in 1951. At the time the sale was stopped in 1951 Mr. Stuart said that 167 employees had evidenced their desire to buy Ralston Purina stock and that the company considered these 167 employees as "key employees." In response to the question as to what constituted a key employee Mr. Stuart said, "A key employee of course can be an officer or a department head or an assistant to a department head but is not confined to an organization chart. It would include an individual who is eligible for promotion, an individual who especially influences others or who advises others, a person whom the employees look to in some special way, an individual, of course, who carries some special responsibility, who is sympathetic to management and who is ambitious and who the management feels is likely to be promoted to a greater responsibility."

Mr. Stuart stated that the sales of stock to employees of Ralston Purina had been limited exclusively to such "key employees." In response to the question as to how the qualifications of key employees were judged, Mr. Stuart said, "That is largely a matter of judgment of the management. We rely on the officers of the company; our department heads principally." Mr. Stuart testified that in selecting such employees the top management consulted the men who managed the mills and who had supervision over and direct contact with a substantial number of employees.

In response to the question as to why the management was desirous of selling stock to its key employees, Mr. Stuart stated, "We feel, sir, that that creates a greater efficiency with the company, because it draws employees of the company closer together. Many of our people come from the rural area, where proprietorship is a matter of great pride to them. The act that they feel that they are owners, at least part owners, in the company, contributes to the morale, and we feel that the idea of breaking down the gap between the ownership and management is something that is highly desirable and something that contributed substantially to the success of the company."

Mr. Stuart testified that it was the employees in the first instance who had indicated their desire to buy the stock. In response to the question as to how the fact that the stock was available to the employees was made known to such key employees Mr. Stuart stated, "The president, speaking for the board of directors, notified the officers, who in turn notified the managers working directly under them, that the company had

or was about to make some stock available. They [the managers] very carefully were told not to solicit in any way orders for stock, but simply to acquaint the people who had indicated an interest or whom they felt it was fair to notify of the situation."

At this point Mr. McPheeters read defendant's Exhibit L into the record, which exhibit was a notice which was given to every branch manager and every store manager where any key employee had evidenced any interest in purchasing stock, advising in regard to the possibility of such stock being available. (See Defendant's Exhibit L, page 66.).

In describing the bonus which Ralston Purina paid out at the end of its fiscal year, September 30, Mr. Stuart said, "During the past several years, substantial bonuses have been paid at the end of the year. It amounts to as much as a million and a half dollars to our employees. To as many as 674 employees. Many of those employees want to invest their bonus, and we have found over the years at about that time they want to buy Purina common stock. On occasions they have gone out with their bonus money and bid against each other in the open market. That is one of the reasons why we have attempted to make stock available, so that our employees would not have to pay a perhaps temporary higher price or bid against each other during a comparatively short period."

Mr. Stuart testified that the Ralston Purina common stock is not dealt in by anyone on any exchange but rather was sold in the over-the-counter market. As to the amount of the bonus which was paid to the employees, Mr. Stuart gave the following data: In 1942 \$100,000 was paid to 159 employees. In 1943 \$178,000 was paid to 163 employees. In 1945 \$290,000 was paid to 197 employees. In 1947, \$782,000 was paid to 256 employees. In 1948 \$734,000 was paid to 252 employees. In 1949 \$1,323,000 was paid to 561 employees. In 1950 \$1,372,000 was paid to 622 employees and in 1951 \$1,575,000 was paid to 674 employees. Mr. Stuart indicated that he was using round figures, and he stated that the key employees to whom the bonus was paid were substantially the same men as the key employees to whom the stock was sold during these years.

Mr. Stuart testified that the bonus was paid only to key employees "whom the management felt had made a special contribution." Mr. Stuart said that approximately 75% of the key employees to whom bonuses were paid over the period from 1947 through 1950 and to whom the common stock of Ralston Purina was offered were already previous stockholders in the company.

Mr. Stuart testified that since 1945 the company had published a regular annual statement which had been sent to all of the company's stockholders, furnished to banks and brokers more or less generally and had been filed with the Securities and Exchange Commission since Ralston Purina's preferred stock was listed with that agency. A copy of this report was then submitted in evidence and marked defendant's Exhibit M. (See Defendant's Exhibit M, page 67.)

Mr. Stuart went on to say that production records were made available to any employees wishing to see them and he stated in this regard, "We send to our sales people, for example and to all our people, but it is primarily directed to sales people, twice a month, all our key people, sir, at least twice a month, sales records, production records are made available to our production people." In response to the question whether the company had at any time during the last 30 years ever sold or attempted to sell any of its common stock to any person other than key employees, Mr. Stuart stated that the company had never sold any stock for the purpose of raising money or to any member of the public. In describing the purpose behind this limited sale of stock Mr. Stuart said, "We have attempted to have the family remain known as the Purina family, and we call each other very largely 'partner,' and that spirit has been created very largely as a result of this policy of offering stock to a limited group."

At this point Mr. Sugrue for the plaintiff began the cross-examination of Mr. Stuart. Mr. Stuart stated that he was familiar with the correspondence which had been had between the Commission's Washington office and Ralston Purina Company during the years 1950 and 1951 concerning the sale of stock. Mr. Stuart identified plaintiff's exhibits which were offered in evidence. (See, Plaintiff's Exhibit A, B, C, D, E, F, G, H, I, J and K, pages 72-82.) Mr. Stuart stated that about 80% of Ralston Purina common stock is owned or controlled by employees, members of employee's families, or former employees and that out of a total of approximately 7,000 employees of the Ralston Purina Company about 1,000 to 1,500 of such employees are stockholders of the company. Mr. Stuart stated, "The common stock ownership in our company goes beyond key employees. There are many little people in our organization who are stock owners." He went on to say that these little people did not acquire their stock directly from the company but rather that they bought it in the open market in one way or another; and that some stock had been given to such employees as a result of an unusual suggestion or some merit such as that. In response to the question as to

whether any employee had ever been turned down when requesting an opportunity to purchase stock, Mr. Stuart stated that many had been turned down and many employees have had their applications to purchase stock materially reduced. In response to Mr. Sugrue's request that he clarify his former testimony with respect to what was meant by the definition of key employees as being employees who are ambitious; sympathetic to management and who advise others, Mr. Stuart stated, "Well, sir, I think that is a matter of influence. I think all of us who have handled people know that there are key people in the various echelons if you have been in military service there were a captain, who perhaps would have felt that one of the lieutenants was a key lieutenant, but you know if you did not have the support of your key sergeant, or the key corporal, or maybe the key private who exercised influence, that you better not go into anything that is very serious; and the same is true in business. Key people are simply not regimented into charts. We don't regiment people in that manner."

Mr. Stuart said that proportionately very few of the key people occupied very subordinate positions in the company. Mr. Sugrue asked, "In any event, these securities are offered to certain persons occupying very low positions in the company's personnel structure?" Mr. Stuart responded, "I don't like that word low. They are important people. We are thinking of them as people. They are not big wheels, if you are referring to the big wheels of an organization, but they are key people."

Mr. Sugrue asked Mr. Stuart how the figure of 400 to 500 people who were offered stock in September 1951 was arrived at. Mr. Stuart stated, "Well, sir, I got myself an average of 1 to 1½ applications to purchase stock every week. That has been about the average. I act as helper to employees and purchase that stock in the open market for them. This group that come and ask me to help them * * * they are all types. Most of them are key employees quite obvious, but I don't exclude, I don't send back the letter from someone whom we cannot consider a key employee. We treat them all alike in that respect. The way, Mr. Sugrue, this works out in practice is something like this: That when one of our sales managers is having a meeting of his group of, say, 30 or 40 men, one will invariably stand up and say, 'What is the situation on getting some of that Purina stock?' and the sales manager will say, 'Well, I haven't—I don't know now. There isn't any stock available.' And the man will insist—I haven't got one such in mind—'Well, what do you say? How do you get it? We know that officers of the company, all those key people in the

past have done very well in their purchase of stock. We want to be on that list."

Mr. Stuart stated that the figure of 400 to 500 employees used in regard to the offerings in August or September 1951 represented "approximately the number of those individuals who had written to their superior and who had evidenced an interest in the purchase of stock if or when same is available, and that many of these requests were made by word of mouth." Mr. Stuart went on to point out that such a figure was only an estimate. "It was not certainly exactly 500, but it was not a thousand, but let us say, or any number substantially above that."

In response to the question of whether or not the directors' resolution of September 11, 1951, restricted the stock offering to any particular type of employee, Mr. Stuart said, "I think I know what you are getting at, and I think I can answer it. Let me see those. I haven't that resolution. The past couple of years we have been very strict in trying to make this stock available to our junior executives, men under 50, so as to give our younger men the chance that our older men have had in the past." Mr. Stuart then went on to read the resolution as follows: "Resolved that Mr. Donald Danforth, Mr. Lewis B. Stuart or Mr. E. R. Siler be and each of them is hereby authorized to sell at \$80 a share, not to exceed 10,000 shares of the authorized but unissued common stock of Ralston Purina Company to employees of Ralston Purina Company of Canada, Ltd., who shall, without any solicitation by the company or its officers or employees, inquire of any of them as to how to purchase common stock of Ralston Purina Company; provided, however, that each such officer is able to purchase stock for less on the open market he is authorized to purchase stock for such employee on the open market at such lesser price; provided further that this authorization shall terminate September 31, 1951."

Mr. Sugrue then asked Mr. Stuart whether or not these gentlemen, the corporate officers, are restricted in the type of people to whom they were authorized to sell stock. Mr. Stuart said that tradition limited them. "Past experience, past what we have done—are all in the picture here. They would govern my action in that just as definitely—it would be assumed by our directors that I would be just as negligent if I failed to follow tradition and custom in that as if it was spelled out." Mr. Stuart also stated that the annual statement to stockholders was mailed out by Ralston Purina to the stockholders in December of each year and that the company's audit is usually completed sometime during November, usually during

the latter part of November. And that the stock offering is traditionally made to certain employees at or about the time they receive the bonus from the company. At this point Mr. Sugrue showed Mr. Stuart the December 15, 1951, issue of the Wall Street Journal and asked him concerning the accuracy of certain statements concerning the figures for the fiscal year 1951 of the Ralston Purina Company. This article stated that during the year 1951 Ralston Purina's net sales increased 35% over the net sales for 1950 and that during the same period the company's profits decreased 30% after all taxes. Mr. Stuart stated, "There is an adjustment in here that I don't believe appears in this analysis, because when we closed our books at the end of 1950 we were not aware of excess profits, that tax, that would apply to that year. If you will read both statements carefully, you can see that this article, I think, does not reflect the adjustment that was made. Our profits for the fiscal year ending September 30, 1951, before taxes was substantially above the preceding year, but after taxes. * * * they are below the preceding year [about] 25%." Mr. Sugrue then asked whether this information concerning the profits of the company was available in September 1951 when the stock offering was made to the key employees. Mr. Stuart answered that such figures were not made available until December 1951.

Mr. Stuart went on to say that production figures of the company consisted of tonnage which was the company's principal unit of measure. In this connection he said, "Now, there are many figures that go into profits, of course; markets, and many other figures. But I believe that you may agree that tonnage, this is volume production, is perhaps the biggest single figure in the company's success. We deal, in discussing with our executives, our board of directors, and our employers, we deal very largely in tonnage figures, not exclusively, of course." Mr. Stuart stated that in connection with the sales figures which were made available twice a month to key people that such figures went to all people in the sales department. "They go to all our officers, about 3 or 4, or half a dozen, depending on how many in the office, because the offices are different sizes, where they are available in some cases through the board, in most cases a number of people's names are put on the article and it is passed around the office."

Mr. Stuart testified that these sales figures went substantially to every department and office in the country. At this point Mr. Sugrue offered in evidence as plaintiff's Exhibit L the said news item from the Wall Street Journal. Mr. McPheeters stated that he doubted whether the figures in the clipping from the Wall Street Journal were correct and that he

would not stipulate regarding the figures. (See Plaintiff's Exhibit L, page 83.)

At this point, Mr. McPheeters for the defendant began the redirect examination of Mr. Stuart. In an attempt to clarify the 1951 resolution of the Ralston Purina Company which spoke about an offering of 10,000 shares and in which there was nothing to limit the offering to key employees, Mr. Stuart stated, "We were limited as officers in every respect that we had been limited in the last several years, with one exception: In the last few years, we had made a special effort not to sell any stock to people over 50 years of age. In all of our discussions, that is the only item that was mentioned or excepted. We indicated a willingness this year—because instead of the junior employee anchor, we found several of our employees' relations got this stock—to protect the employees against the market rise as we did this year. We felt, however, that since pressure of the market was the prime factor this year, that we would not object to the older people who might be in the market. We felt this." Mr. Stuart also stated that the same procedure was followed in 1951 as had been followed in the past in connection with the offering of this stock.

Mr. McPheeters stated that he thought Mr. Sugrue was trying to create the impression that because a man was in the maintenance department, he could not be called a key employee. The court disagreed with Mr. McPheeters and stated, "I got the impression that key employee is a very elastic term as far as efficiency is concerned. A key employee might be a key employee in one branch, while frequently they might have a man doing that same work in another branch * * * [who] loaf[s] on the job and he is not a key employee." In response to this statement, Mr. McPheeters stated that he was attempting to make the point that "a payroll classification is not an employee, and what is in a payroll classification at one point, the man who holds the same payroll classification in another is not the same man, and we are making the difference in the man."

Mr. McPheeters asked Mr. Stuart why Ralston Purina failed to register stock that was offered to the employees in 1951. Mr. Stuart stated, "The reasons are very definite. Personally, I have been through a registration just once, and when we started to register our preferred stock, we started in January. It took until May 15th before we could get the schedules. It cost us tens of thousands of dollars. Now, when you are putting out an issue, or when you are selling to a group, to a small intimate group, if the sale is between three or four or ten thousand shares and you have to spend for a hundred

special accountants' fees, lawyers' fees, printing expenses, travel expenses, clerical expenses—there is a host of expenses in connection with the registration which makes it entirely unwarranted to spend that much money to accommodate key employees. The big factor is a very important factor. We come to the end of the year, we cannot wait $3\frac{1}{2}$ months to know what we are going to do; we have to deal with our employees, pay our bonuses, and make our deals then. If we have to wait for $3\frac{1}{2}$ months, or if we have to wait for $2\frac{1}{2}$ months, which probably would be a pretty fair length of time, and then pay financial extras, legal people, accounting people, printing, long distance telephone and telephone calls, clerical expenses, travel, and pile all that expense on the sale of a few shares of stock to an intimate group, we feel that that is entirely unwarranted, and it is a matter of economy on our part that we have come in here to attempt to win our case, Your Honor.

"I might add another thing or two, as long as you went into that type of formal matter. With your family, your business family, it is a lot like your own family, one of the members comes to your house for dinner, you call on him, you want to agree on something. It distorts or tends to distort the intimate relations that we attempt to create in our company between the owners of our company and the people who run our company.

"Again, when we emphasize the fact that we don't try to cater to our big wheel. We try to cater to the backbone of our company, the key people that run the company. The registration—in this registration, I believe you might let us style maybe the top 12 people in our company, or the top two dozen people in our company, the so-called 'big wheels' of our company. That is not, in our opinion, a democratic way to run a company, and it is not a way to engender the spirit which we have engendered in our company and which we earnestly pray we can continue to engender.

"At this point Mr. Sugrue for the plaintiff began the re-examination of Mr. Stuart. Mr. Sugrue asked if there were any profit figures available to the employees in the company other than the figures which result from the annual audit which commences around the end of September. Mr. Stuart stated that the company filed a quarterly report with the Commission which consisted of gross sales figures. And that was the only final report which Ralston Purina put out. Mr. Sugrue asked whether any net profit figures were available to the employees. Mr. Stuart stated that the report filed with the Commission was the only report which Ralston Purina put out and that it was an annual report. Mr. Sugrue asked whether

any profit figures audited or unaudited were available to anybody in the company from the end of one fiscal year to the end of the next fiscal year. Mr. Stuart stated that depending on the individual all figures are available to some, and to a lesser degree to others. He also stated that he was vice president of the company and that figures were available to him showing the profits of Ralston Purina for a given month. He stated that these figures were available to many others but that they were not available to all of the so-called key employees."

Which was all the evidence offered at the hearing.

DEFENDANT'S EXHIBIT L

(Copy of information memorandum released to certain key store managers)

ST. LOUIS, MISSOURI, *September 21, 1951.*

If you would like to buy some Purina Common Stock at \$80 a share, which is about the current market, let me know by October 1 how many shares you want.

The Company has issued the following statement which should be thoroughly understood by anyone interested in acquiring stock at this time.

"The Company is unwilling to take the responsibility, in essence, of guaranteeing or forecasting that the price of Purina stock is going up or will remain at its present price for the next twelve months or so. Consequently the Company is making no recommendation that employees purchase at current prices.

"The Company, however, is willing to try to protect employees against a market rise in the price of the stock resulting from temporary competitive bidding by employees. To do this the Company will make available for a limited time some authorized but unissued stock at \$80.00 a share. The only employees to whom this stock will be available will be those who take the initiative and are interested in buying stock at present market prices.

"If stock can be purchased on the open market at a price lower than \$80 a share, the employee will, of course, buy at the lower price."

H. A. STEIN.

sl.

P. S. In Fletch's absence from the office, I am passing this information on to you because I thought you might be interested.

H. A. S.

DEFENDANT'S EXHIBIT M

*Donald Danforth, President**RALSTON PURINA COMPANY,
St. Louis 2, Mo., December 14, 1951.*

TO OUR STOCKHOLDERS:

Our financial record for the past year can be summarized very briefly. It would take volumes to tell adequately of the loyalty, initiative and ability of the men and women who made this record possible.

Our dollar sales increased \$89,436,935 or 35 percent. Our operating profit before taxes increased \$4,263,283 or 21 percent. Our Federal taxes increased \$6,635,146 or 76 percent. Our net profit after taxes decreased \$2,371,863 or 20 percent.

We have the satisfaction of knowing that we are making an important contribution to the better feeding of our Nation. Our contribution taxwise is self-evident.

Sincerely yours,

DONALD DANFORTH, *President,*
RALSTON PURINA COMPANY.

DD-vlt.

ACCOUNTANT'S REPORT

TO THE BOARD OF DIRECTORS,

Ralston Purina Company, St. Louis, Missouri.

We have examined the balance sheet of Ralston Purina Company and its domestic subsidiaries consolidated as of September 30, 1951, and the related statement of profit and loss and earnings retained for use in the business for the year then ended. Our examination was made in accordance with generally accepted auditing standards, and accordingly included such tests of the accounting records and such other auditing procedures as we considered necessary in the circumstances.

In our opinion, the accompanying balance sheet and statement of profit and loss and earnings retained for use in the business present fairly the financial position of Ralston Purina Company and its domestic subsidiaries consolidated at September 30, 1951, and the results of their operations for the year then ended, in conformity with generally accepted accounting principles applied on a basis consistent with that of the preceding year.

PEAT, MARWICK, MITCHELL & Co.
ST. LOUIS, MISSOURI, December 5, 1951.

*Statement of profit and loss and earnings retained for use in the business
for the year ended September 30, 1951*

RALSTON PURINA COMPANY AND DOMESTIC SUBSIDIARIES CONSOLIDATED

Income from sale of goods and other sources:

Net sales	\$342,802,522
Miscellaneous merchandising and service departments income (net)	1,579,790
Interest received	57,301
Miscellaneous income	414,581
Proceeds from life insurance, less surrender value	252,414
	<hr/> 345,106,608 <hr/>

Costs, expenses, and other charges:

Cost of materials and operating expenses other than shown separately below	289,725,112
Administrative, research, distribution, and general expense	29,159,018
Contribution under pension plans and pensions paid	987,015
Interest paid	325,782
Interest and amortization of expense on debentures	96,076
Miscellaneous charges	158,911
Federal excess profits tax—prior year	500,453
Provision for Federal taxes on income, including \$2,845,000 for excess profits tax	15,369,000
	<hr/> 336,322,267 <hr/>

Net Profit	8,784,341
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Earnings retained for use in the business at Sept. 30, 1950	40,214,469
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Total	48,998,810
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Less:

Amount transferred to common capital stock account based on the issuance of one share of common stock for each two shares held	\$10,245,100
Cash payments to certain fractional share holders	1,428
	<hr/> 10,246,528 <hr/>

Total	38,752,282
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Deduct—dividends declared:

On 3¾% cumulative preferred stock—\$3.75 per share	374,982
On common stock—\$2 per share	2,459,166
	<hr/> 2,834,148 <hr/>

Earnings retained for use in the business at Sept. 30, 1951	35,918,134
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See accompanying Notes to Financial Statements.

RALSTON PURINA COMPANY AND DOMESTIC SUBSIDIARIES CONSOLIDATED

Balance sheet as of Sept. 30, 1951

ASSETS

Current assets:

Cash in banks and on hand		\$10,297,569
United States Government Securities:		
At cost (quoted market prices \$13,986,-808)	\$13,962,062	
At redemption prices and accrued interest, of which \$800,000 pledged (note 1)	1,403,941	
		15,366,003
Accounts receivable, less provision for doubtful accounts		26,936,336
Advances on purchases of materials		959,259
Inventories (note 2):		
Finished products	\$5,127,395	
Grain, raw materials, bags, containers, etc.	22,421,147	
Miscellaneous merchandise, livestock, etc.	3,186,152	
		30,734,694
Prepaid expenses—insurance, taxes, etc.		270,693
Total Current Assets		84,564,554
Investment in and advances to Canadian Subsidiary not consolidated (note 3)		634,597
Other investments and advances, including cash surrender value of life insurance, \$407,524		505,366
Plant and equipment (substantially at cost):		
Land	\$1,338,974	
Buildings and equipment, less depreciation, \$18,196,720	33,184,843	
		34,523,817
Formulas, copyrights, trade marks, patents, goodwill, etc.		1
Deferred charges:		
Mill and office supplies, etc.	\$913,298	
Unamortized debenture expense	48,969	
		962,267
Total		121,190,602

See accompanying notes to financial statements.

LIABILITIES

Current liabilities:

Accounts payable	\$7,249,371
Amounts payable for taxes withheld	595,010
Accrued taxes, compensation, interest, and miscellaneous	1,916,263
Dividends payable	93,859
Provision for Federal and State taxes on income and excess profits tax	17,811,670
Total current liabilities	27,666,173
3¾% sinking fund Debentures due 1971 (note 4)	15,000,000
Reserves for self-insurance	351,399
Stockholders' equity:	
Cumulative preferred stock of \$100 par value per share. Authorized 250,000 shares issuable in one or more series. Issued and outstanding—3¾% cumulative preferred stock, 100,000 shares	\$10,000,000

Common stock of \$25 par value per share.	
Authorized 1,600,000 shares. Issued and	
outstanding—1,229,712 shares-----	
	30, 742, 800
Premium received on capital stock in excess	
of par value (including \$7,657 during	
year)-----	
	1, 512, 096
	<hr/>
	42, 254, 896
Earnings retained for use in the business	
(note 5)-----	
	35, 918, 134
	<hr/>
Total stockholders' equity-----	\$78, 173, 030
	<hr/>
Total-----	121, 190, 602
	<hr/>

NOTES TO FINANCIAL STATEMENTS

(1) At September 30, 1951, the parent company had pledged \$800,000 par value United States Treasury Savings Notes, Series "D," as collateral security on a loan negotiated by its Canadian subsidiary.

(2) The inventories at September 30, 1951, are based on physical inventories taken as of that date or on perpetual inventory records adjusted to quantities shown by physical inventories taken from time to time during the year.

Finished products are valued at market prices of ingredients plus manufacturing cost, with the exception of certain items amounting to \$434,164 which are stated at approximate market. Grain, raw materials, bags, containers, etc., are stated at the lower of average cost or replacement market. Miscellaneous merchandise, livestock, etc., (except \$1,666,673 valued at approximate market) are priced at average cost.

(3) The parent company owns all of the outstanding capital stock of the Canadian subsidiary, Ralston-Purina Company of Canada, Limited; the investment therein, \$100,000, is stated at cost. The company's equity in the net assets of this subsidiary, as shown by its balance sheet as of September 30, 1951, was \$2,216,907 expressed in Canadian currency. The net profit of this subsidiary for the year ended September 30, 1951 was \$537,135 expressed in Canadian currency.

(4) The 3¼% sinking fund debentures due June 1, 1971, are subject to redemption prior to maturity at principal amount and accrued interest, plus a premium of 3% if redeemed on or before June 1, 1952. This premium reduces periodically until after June 1, 1969, when no premium is required. There is an optional redemption provision whereby debentures may be called at lower redemption rates on any June 1, if the parent company has net earnings after June 30, 1951 (less dividends declared) equal to the amount required for the proposed re-

demption. Beginning in 1958, the parent company is required to make the following annual sinking fund deposits: 1958-1960, \$500,000; 1961, \$600,000; 1962, \$700,000; 1963, \$800,000; 1964, \$900,000; 1965-1970, \$1,000,000. Debentures acquired other than through the operation of the sinking fund may be applied as a credit against sinking fund payments (if certain provisions are met) at principal amount thereof.

(5) The earnings retained for use in the business represent the amount remaining after transfers in the current and prior years to common stock account. The indenture securing the 3 $\frac{1}{4}$ % debentures provides that cash dividends on common stock or acquisitions of capital stock may be paid only from net earnings of the company after October 1, 1950. Of the earnings retained for use in the business at September 30, 1951, \$29,839,973 are restricted under the foregoing provisions. The Articles of Association also contain certain restrictions as to dividend payments on, or acquisition of, common stock.

(6) At September 30, 1951 the parent company had outstanding commitments of approximately \$1,750,000 with respect to uncompleted construction.

(7) Provision for depreciation of plant and equipment for the year amounted to \$2,150,843.

RALSTON PURINA COMPANY

DIRECTORS

Wm. H. Danforth, *Chairman of the Board of Directors*.

Donald Danforth, George W. Simpkins.

Raymond E. Rowland, Lewis B. Stuart.

PRINCIPAL OFFICERS

Donald Danforth, *President*.

Roland M. Bethke, *Vice President (Research)*.

Eldred A. Cayce, *Vice President (Purchasing)*.

David L. Grant, *Vice President (Chow Production)*.

F. Wendell Huntington, *Vice President (Personnel)*.

Gordon M. Philpott, *Vice President (Advertising)*.

Raymond E. Rowland, *Vice President (Products and Manufacturing)*.

Louis C. Stevenson, *Vice President (Sales)*.

Lewis B. Stuart, *Vice President (Finances), and Secretary*.

John D. Sykes, *Vice President (Public Relations)*.

E. Ray Siler, *Treasurer*.

P. L. Jacoby, *Controller*.

L. B. Murdock, *Assistant Secretary*.

GENERAL OFFICES,
Checkerboard Square, St. Louis 2, Missouri.

Major milling properties: Amarillo, Tex., Battle Creek, Mich., Bloomington, Ill., Brawley, Calif., Buffalo, N. Y., Charlotte, N. C., Circleville, Ohio, Davenport, Iowa, Delmar, Del., Denver, Colo., Fort Worth, Tex., Iowa Falls, Iowa, Jackson, Miss., Kansas City, Mo., La Fayette, Ind., Los Angeles, Calif., Lubbock, Tex., Macon, Ga., Miami, Fla., Minneapolis, Minn., Muskogee, Okla., Nashville, Tenn., Oakland, Calif., Oklahoma City, Okla., Omaha, Nebr., Pocatello, Idaho, Richmond, Ind., St. Johnsbury, Vt., St. Louis, Mo., Stockton, Calif., Tampa, Fla., Visalia, Calif., Wichita, Kans., Wilmington, Del.

Subsidiary companies: Ralston-Purina Company of Canada, Limited; Woodstock and Smithville, Ont., Montreal, Que.; Taylor Milling Company, Stockton, Calif.; West Coast Wharf & Storage Company, Oakland, Calif.

Transfer Agent (Preferred Stock), Chemical Bank & Trust Company, 165 Broadway, New York 15, N. Y.

Registrar (Preferred Stock), City Bank Farmers Trust Company, 22 William Street, New York 15, N. Y.

Common Stock certificates are transferable only at the general offices of Ralston Purina Company.

PLAINTIFF'S EXHIBIT A

JUN 23, 1950.

Mr. E. R. SILER,

Treasurer, Ralston Purina Company

835 South Eighth Street, St. Louis 2, Missouri.

Re: File No. 1-3255

DEAR SIR: The annual report of your company on Form 10-K for the fiscal year ended September 30, 1949 has been examined. We have the following comments in connection therewith:

It is noted from the response to Item 12 of the report for the fiscal year ended September 30, 1948, that the registrant sold 6,984 unissued common shares and 1,120 treasury common shares during the period under report for an aggregate of \$387,740. It is represented that these securities were sold privately to employees of the company and that there was no public offering. Since it does not appear that the securities were registered under the Securities Act of 1933 and insufficient information is given for us to determine whether an exemption from registration was available, you are requested to inform.

this Division by letter of the number of persons to whom the securities were offered and the number of persons to whom securities were sold. In addition, the letter should state whether the registrant obtained assurance that the employees purchased the securities for investment and not with view to their distribution.

It is noted from Note (11) of the notes to financial statements in the reports for the fiscal years ended September 30, 1948 and 1949, that the registrant has in effect a fund for encouraging the development of initiative of key employees, including officers. It appears that the operation of this fund constitutes a bonus or profit-sharing plan and that the putting of the plan into effect was an event which should have been reported in a current report on Form S-K within ten days after the close of the month in which the event occurred. Under the circumstances it is suggested that the registrant file at its early convenience a current report on Form S-K, in which the information and exhibit required by Items 10 and 15 of the form are furnished.

The following comments are for your guidance in preparing future reports:

Adjustments of prior years' operations should be reflected in the income statement rather than in surplus. Reference is made to Accounting Research Bulletin No. 32 issued by the American Institute of Accountants, particularly paragraph 11 thereof.

It is suggested that the amounts shown in Note (4) be expressed in terms of converted American dollars.

Very truly yours,

BYRON D. WOODSIDE,
Assistant Director
Division of Corporation Finance.

cc: New York Stock Exchange.
RCHocker.
(Flaherty).

PLAINTIFF'S EXHIBIT B

Office of the Vice President

RALSTON PURINA COMPANY,
St. Louis 2, Mo., July 12, 1950.

Mr. BYRON D. WOODSIDE, *Assistant Director,*
Division of Corporate Finance,
Securities and Exchange Commission,
Washington, D. C.

Re: Ralston Purina Company Your File No. 1-3255

DEAR SIR: Receipt is acknowledged of your letter of June 23, 1950.

With reference to the shares of common stock sold by the company in its fiscal year 1948, all of said shares were sold solely to employees of the Company who were in various key positions with the Company. The purpose of the sales was not to raise additional funds for the Company but was to enable such employees to become stockholders of the Company in view of the exceedingly limited supply of common stock of the Company purchasable on the open market. It was thoroughly understood by all such employees that they were purchasing said shares of stock for investment and not with a view to their distribution. It has been the policy of the Company since its institution to encourage employee stock ownership by key employees. Over many years only a negligible amount of such employee stock has been sold by the employees to outsiders unless such employees either die or leave the employ of the Company.

With reference to the bonus fund referred to in Note 11 to the financial statements for 1948 and 1949, this fund has been in effect for many years and long prior to the listing of the preferred stock on the New York Stock Exchange. It is the Company's position that said fund, commonly known as the "President's Development Fund," does not constitute a profit sharing plan within the meaning of Form 8-K. There is no written plan or agreement or statement of policy in connection with this fund. It merely operates by the setting aside of various amounts each year, and the drawing of checks to deserving officers and employees out of said fund, the size of the fund and the amounts distributed being determined in the sole discretion

of the President of the Company, except that the amount, if any, to be paid to the President of the Company is determined by the Chairman of the Board of Directors. It is, therefore, most respectfully submitted that it would be wholly impossible to file the information requested in Form 8-K.

Your comments as to accounting matters have been called to the attention of our accountants, Messrs. Peat, Marwick, Mitchell & Company for their information in preparing accounting statements for subsequent years.

Yours very truly,

RALSTON PURINA COMPANY,
Lewis B. Stuart,
LEWIS B. STUART, *Vice-President.*

sn.

cc: New York Stock Exchange.

PLAINTIFF'S EXHIBIT C

JULY 27, 1950.

Mr. LEWIS B. STUART,

Vice President, Ralston Purina Company,
Checkerboard Square, St. Louis 2, Missouri.

Re: File No. 1-3255

DEAR SIR: This is with reference to your letter of July 12, 1950, in response to our letter of June 23 with respect to the annual reports on Form 10-K filed by your company. You state that it was thoroughly understood by all employees who purchased stock from the company during its fiscal year ended September 30, 1948, that such shares were purchased for investment and not with a view to their distribution. You also state that the operation of the "President's Development Fund" does not constitute a profit-sharing plan within the meaning of Form 8-K since there is no written plan or statement of policy in connection therewith and the size of the fund and the amounts distributed therefrom are determined in the sole discretion of the president, except that the amount, if any, to be paid to the president is determined by the chairman of the board of directors.

As requested in our letter of June 23, it would be appreciated if the registrant would inform this Division by letter of the number of persons to whom its shares sold in the 1948 fiscal year were offered and the number of persons who purchased such shares.

In view of the facts stated in your letter, we will not raise any further question at this time regarding the filing of a current report with respect to the "President's Development Fund".

Very truly yours,

R. H. BAGLEY,
for BYRON D. WOODSIDE,
Assistant Director,
Division of Corporation Finance.

RCHocker:cms.
(J. D. Flaherty):

PLAINTIFF'S EXHIBIT D

Office of the Vice President

RALSTON PURINA COMPANY,
St. Louis 2, Mo., August 3, 1950.

Mr. BYRON D. WOODSIDE,
Asst. Director, Division of Corporate Finance,
Securities and Exchange Commission,
Washington, D. C.

Re: Ralston Purina Company, Your File No. 1-3255 ♦

DEAR MR. WOODSIDE: Replying to the request in your letter of July 27, 1950, we wish to advise that 8,104 shares of our Common stock were sold to 247 of our employees in our 1948 fiscal year. To the best of our knowledge, this stock was purchased by all of the employees to whom it was offered.

Very truly yours,

Lewis Stuart,
LEWIS B. STUART,
Vice President.

LBS: HLN.

PLAINTIFF'S EXHIBIT E

AUGUST 15, 1951.

Mr. S. R. SILER,
Treasurer, Ralston Purina Company,
835 South Eighth Street, St. Louis 2, Missouri.

Re: File No. 1-3255

DEAR SIR: We have the following comment in connection with the annual report on Form 10-K for the fiscal year ended September 30, 1950, filed by your company.

From comparison of the balance sheets in the 1949 and 1950 reports it appears that the registrant sold 19,659 shares of common stock during the fiscal year ended September, 1950.

It is requested that you advise this Division by letter why these shares were not registered under the Securities Act of 1933. If an exemption from registration is claimed the facts necessary to establish the availability of the exemption should be set forth in the letter.

Very truly yours,

ERNEST U. RAMSPECK,
for HARVEY M. THORSTON,
*Assistant Director,
Division of Corporation Finance.*

cc: New York Stock Exchange.

RCHocker:mms.

(J. D. Flaherty)

PLAINTIFF'S EXHIBIT F

AUGUST 18, 1950.

Mr. LEWIS B. STUART,

*Vice President, Ralston Purina Company,
Checkerboard Square, St. Louis 2, Missouri.*

Re: File No. 1-3255

DEAR SIR: This will acknowledge receipt of your letter of August 3, 1950, stating that 8,104 shares of your common stock were sold to 247 employees during your 1948 fiscal year. Based on the statements made in your July 12, 1950, letter to the effect that it was the understanding of all employees who took the stock that their purchase was for investment and not resale it would appear that you were relying upon the provisions of the second clause of Section 4 (1) of the Securities Act of 1933 for an exemption from registration.

In our opinion your reliance upon this section was not well founded.

I am enclosing a copy of the Securities Act Release No. 285 which may be of some assistance to you with regard to the meaning and limitations of the "private offering" exemption.

The advisability of communicating with us prior to making any future offering of securities is suggested.

Very truly yours,

BYRON D. WOODSIDE,
*Assistant Director,
Division of Corporation Finance.*

PLAINTIFF'S EXHIBIT G

Office of the Treasurer

RALSTON PURINA COMPANY,
St. Louis 2, Mo., September 7, 1951.

MR. HARVEY A. THORSON,
*Asst. Director, Division of Corporation Finance,
Securities and Exchange Commission,
Washington 25, D. C.*

Re: Ralston Purina Company, Your File No. 1-3255

DEAR MR. THORSON: Replying to your letter of August 15, 1951, we sold 10,000 shares of our common stock to 415 of our key officers and employees on October 3, 1949, and 9,659 shares of our common stock to 420 such key officers and employees on September 22, 1950.

In all cases said sales were made exclusively to key officers and employees and no offering in connection therewith was made to the general public or even to the general "run of the mill" employees. The offerings were in accordance with the company's long standing desire to encourage stock ownership by its key employees and, incidentally, to avoid any artificial "run up" of the market for stock of Ralston Purina Company arising out of the fact that during or shortly prior to the offering date the company had paid to those and other employees substantial cash bonuses, principally to the key employees here involved. The company's officers were apprehensive that if it did not make stock available for purchase by its employees they would bid against each other in the open market, creating a temporary and artificial activity therein, running up the market price by such competitive bids, which in turn would, after the period had passed, result in a declining market price. The company, of course, was not primarily concerned with the market price of its stock but it was concerned that its key employees do not by their action harm each other and create an artificial market situation.

The company has been advised by its counsel that any such special offering, directly and without any intervention of brokers, to key employees is not a public offering, and that such shares need not be registered with the Securities and Exchange Commission.

Very truly yours,

(S) E. R. Siler,
E. R. SILER,

Treasurer

PLAINTIFF'S EXHIBIT H

AIR MAIL

SEPTEMBER 14, 1951.

Mr. E. R. SILER,

*Treasurer, Ralston Purina Company,**Checkerboard Square,**St. Louis 2, Missouri.*

Re: File No. 1-3255

DEAR MR. SILER: This will acknowledge your letter of September 7, 1951, relating to the sale of 19,659 shares of Ralston Purina common stock. You state that Ralston Purina Company sold 10,000 such shares to 415 of its key officers and employees on October 3, 1949 and 9,659 such shares to 420 key officers and employees on September 22, 1950. You add that your company has been advised by its counsel that the offering, which was made directly and without any intervention of brokers, to its key employees was not a public offering and that such shares need not be registered with this Commission. While the basis upon which you claim an exemption from registration is not made entirely clear by your letter it would appear that reliance was placed on the provisions of the second clause of Section 4 (1) of the Securities Act of 1933.

Reference is made to the correspondence in July and August 1950 between this office and your company regarding sales of your common stock in 1948 to 247 employees. Specifically you were advised in our letter of August 18, 1950, that it was our opinion that reliance upon Section 4 (1) of the Securities Act of 1933 for an exemption from registration with regard to your 1948 transactions with employees was not well founded. In this connection, we suggested the advisability of communicating with us prior to making any future offering of your securities. The limitations of the exemption under consideration were called to your attention in Securities Act Release No. 285 which was enclosed with our August 18, 1950 letter. Nevertheless the following month, viz., on September 22, 1950, your company sold 9,659 shares to 420 officers and employees.

Since it appears your company has followed the practice of making unlawful public offerings of its securities every year since 1948, and in view of the possibility, particularly in 1950, that the violations were willful you are requested to advise us

promptly whether you intend again to make another such offering without registration this year.

Very truly yours,

(S) *H. A. Thorson;*
HARVEY A. THORSON,
Assistant Director,
Division of Corporation Finance.

SBinder-ae.
Flaherty.

PLAINTIFF'S EXHIBIT I

Office of the Vice President

RALSTON PURINA COMPANY,
St. Louis 2, Mo., September 19, 1951.

Mr. HARVEY A. THORSON,
Assistant Director, Division of Corporation Finance,
Securities Exchange Commission,
Washington 25, D. C.

Re: Ralston Purina Company, Your File No. 1-3255

DEAR MR. THORSON: We acknowledge receipt of your letter of September 14, 1951. We have referred this matter to our counsel who have advised us that in their opinion all our prior actions mentioned by you in said letter were legal and proper under the Securities Act of 1933 as amended in that we did not make a public offering of our securities but on the contrary limited the offering to key employees.

With reference to the last paragraph of your letter, the Corporation does not intend to make any offering of its securities to its employees this year nor to solicit any offers from them to buy its securities. However, the Board of Directors did at their meeting on September 11, 1951, adopt the following resolution:

"Resolved, that Mr. Donald Danforth, Mr. Lewis B. Stuart or Mr. E. R. Siler be and each of them is hereby authorized to sell at \$80 a share, not to exceed 10,000 shares of the authorized but unissued common stock of Ralston Purina Company to employees of Ralston Purina Company or Ralston-Purina Company of Canada Ltd., who shall, without any solicitation by the Company or its officers or employees, inquire of any of them as to how to purchase common stock of Ralston Purina Company; provided, however, that if such officer is able to purchase such stock for less on the open market he is authorized to purchase stock for such employee on the open market at

such lesser price; provided further that this authorization shall terminate December 31, 1951."

Pursuant to such resolution, it is the intention of the officers to make sales only to key employees who are purchasing for investment and not for resale. Although the time limit fixed in the resolution is December 31, 1951, it is anticipated that all sales thereunder will be made before October 31, 1951, since experience has shown that the demand for stock immediately follows the cash bonus customarily paid toward the close of our fiscal year ending September 30.

Very truly yours,

(S) *Lewis B. Stuart,*
LEWIS B. STUART, *Vice President,*
RALSTON PURINA COMPANY.

LBS:HLN.

PLAINTIFF'S EXHIBIT J

AIR MAIL

SEPTEMBER 25, 1951.

Mr. LEWIS B. STUART,
Vice President, Ralston Purina Company,
Checkerboard Square, St. Louis 2, Missouri.

Re: File No. 1-3255

DEAR SIR: This will refer to your letter of September 19, 1951, regarding the sale of common stock of your company to employees. You state that the Board of Directors of your company adopted a resolution on September 11, 1951, authorizing Mr. Donald Danforth, Mr. Lewis B. Stuart or Mr. E. R. Siler, among other things, to sell at \$80 per share not to exceed 10,000 shares of the authorized but unissued common stock of Ralston Purina Company to employees of such company or Ralston Purina Company of Canada, Ltd. It is noted you anticipate that all sales under such resolution will be made before October 31, 1951.

Please advise us immediately by return air mail or telegram the first date on which purchases by employees were or will be possible, the number of eligible employees, and the criteria employed to determine whether a person is a "key" employee.

We would also appreciate your advising us the price per share which your company received for the common stock it sold in 1949 and for the stock it sold in 1950.

Very truly yours,

HARVEY A. THORSON,
Assistant Director,
Division of Corporation Finance.

ABinder:mms.
(J. D. Flaherty).

PLAINTIFF'S EXHIBIT K

[WESTERN UNION]

HARVEY A. THORSON,

Assistant Director, Division of Corporation,
Finance Securities and Exchange Commission,
Washington, D. C.

Re: Your file 1-3255. Purchases of stock made available by our directors on September 11 have been possible since September 14. The number of eligible key employees is approximately five hundred. Criterion employed to determine if a person is a key employee is position held, namely, an officer, department head, assistant to a department head or other employee the company considers eligible for promotion to a position of greater responsibility as an administrative, production, sales, or research department head or an assistant to a department head. Price received by our company on sale of stock to employees in 1949 was \$35 a share, in 1950 \$70 a share. A fifty percent stock dividend was subsequently distributed on December 4, 1950.

RALSTON PURINA CO.
LEWIS B. STUART.

PLAINTIFF'S EXHIBIT L

RALSTON PURINA PROFIT FOR FISCAL 1951 DOWN DESPITE
35% SALES RISE

From the Wall Street Journal, St. Louis Bureau

St. Louis.—Despite a 35% jump in sales, net income of Ralston Purina Co. for the fiscal year ended September 30 fell to \$8,784,341, from the \$12,560,665 reported for the preceding year, according to Donald Danforth, president.

Earnings a share for fiscal 1951 were \$6.84 compared with the preceding year's \$14.87, based on the smaller number of common shares then outstanding.

Sales for the year ended September 30 amounted to \$342,802,522, up from \$253,365,587 in fiscal 1950.

Federal income taxes for the recent fiscal year totaled \$15,369,000, including \$2,845,000 in excess profits taxes. This compares with federal income taxes of \$8,233,400 for fiscal 1950.

The company also included in its expenses for fiscal 1951 a special charge of \$500,453 for federal excess profits taxes due on the preceding year's income.

Ralston Purina Co. and domestic subsidiaries consolidated report for the fiscal year ended September 30:

	1951	1950
† Earned a share	\$6.84	\$14.87
Net sales	342,802,522	253,365,587
Total income	345,196,608	225,596,762
Costs, expenses, other charges	320,452,814	234,796,697
‡ Special tax charge	500,453	
* Federal income taxes	15,369,000	8,233,400
Net profit	8,784,341	12,560,665
Preferred dividends	374,982	375,005
Common dividends	2,459,166	3,239,995
Number common shares outstanding	1,229,712	819,659
Number preferred shares outstanding	100,000	100,000

† After preferred dividend requirements.

‡ Federal excess profits taxes for the 1950 fiscal year but charged to expenses for 1951 fiscal year.

* Includes \$2,845,000 for excess profits tax.

[CAPTION]

Notice of Appeal to United States Court of Appeals

Notice is hereby given that the Securities and Exchange Commission, plaintiff herein, hereby appeals to the United States Court of Appeals for the Eighth Circuit from the final judgment entered in this action on February 14, 1952.

Dated February 20, 1952.

(S) *Thomas B. Hart.*

THOMAS B. HART.

(S) *Alexander J. Brown, Jr.*

ALEXANDER J. BROWN, Jr.

(S) *Robert J. Sugrue.*

ROBERT J. SUGRUE.

Louis Loss,

LOUIS LOSS,

Associate General Counsel, Securities and Exchange Commission, Washington, D. C.

[CAPTION]

Statement of points relied on.

Comes now the Securities and Exchange Commission, Petitioner in the above entitled matter, and files the following statement of points upon which it relies for the allowance and in the prosecution of an appeal from the order and judgment

entered by the United States District Court for the Eastern Division of the Eastern Judicial District of Missouri on February 14, 1952, in the case therein pending entitled, "Securities and Exchange Commission v. Ralston Purina Company, No. 8212 (2)" dismissing the cause of action and dissolving the preliminary injunction:

1. The said District Court erred in finding that the offering of securities to employees of the Ralston Purina Company was not a public offering under Section 4 (1) of the Securities Act of 1933.

2. The said District Court erred in concluding that the defendant below was not violating Section 5 (a) of the Securities Act of 1933 and in dissolving the injunction against such violation.

Wherefore, Petitioner prays that said order entered on February 14, 1952, be set aside and reversed and that such other and further relief may be given Petitioner as to this Honorable Court may seem just and proper.

(S) Louis Loss,
Louis Loss,

*Associate General Counsel, Securities and Exchange
Commission, 425 Second Street, N. W., Washington
25, D. C.*

MAY 9, 1952.

List of relevant docket entries

1951

Oct. 24—Plaintiff's complaint filed. Preliminary injunction against defendant filed and entered. Plaintiff's statement in support of motion for preliminary injunction, together with supporting affidavit of Robert J. Sugrue, Esq., filed.

Nov. 21—Answer of defendant to plaintiff's complaint, filed.

Dec. 19—Order on pretrial conference of November 27, 1951, together with pretrial conference Exhibits A, B, C, D, E, F, G, H, I, J, and K and tabulation of salary range of defendant's employees as furnished by counsel for defendant, filed.

1952

Jan. 9—Court's amendment to pretrial order of November 27, 1951, filed.

Feb. 12—Memorandum opinion of the Court filed determining issues on final hearing and directing decree be submitted dismissing plaintiff's complaint and dissolving preliminary injunction heretofore entered October 24, 1951.

- Feb. 14—Final judgment filed and entered finding issues in favor of defendant and against plaintiff, dismissing complaint and dissolving preliminary injunction heretofore entered October 24, 1951.
- Feb. 20—Plaintiff's notice of appeal to the United States Court of Appeals, 8th Circuit, from final judgment entered herein February 14, 1952, filed and copy thereof forthwith transmitted by Clerk to Thomas S. McPheeters, attorney of record for defendant.
- Feb. 20—Motion of plaintiff for restoration of preliminary injunction pending appeal filed and said motion, together with stipulation of parties this day filed, are submitted and said motion denied.
- Mar. 28—Transcript of trial proceedings before the Court December 28, 1951, filed by Official Court Reporter.
- May 12—Plaintiff's statement of points on which it will rely on appeal, filed.

And thereafter the following proceedings were had in said cause in the United States Court of Appeals for the Eighth Circuit, viz:

(Appearance of Roger S. Foster as Counsel for Appellant.)

UNITED STATES COURT OF APPEALS FOR THE EIGHTH
CIRCUIT

No. 14611

SECURITIES AND EXCHANGE COMMISSION, APPELLANT,

vs.

RALSTON PURINA COMPANY, A MISSOURI CORPORATION

The Clerk will enter my appearance as Counsel for the Appellant.

ROGER S. FOSTER,
General Counsel.

(Endorsed): Filed in U. S. Court of Appeals, May 22, 1952.

(Appearance of David Ferber as Counsel for Appellant.)

The Clerk will enter my appearance as Counsel for the Appellant.

DAVID FERBER,
Securities and Exchange Commission.
Washington, 25, D. C.

(Endorsed): Filed in U. S. Court of Appeals, August 11, 1952.

(Appearance of Counsel for Appellee.)

The Clerk will enter our appearance as Counsel for the Appellee.

THOMAS S. MCPHEETERS,
GEORGE W. SIMPKINS,
1630 Boatmen's Bank Building,
St. Louis 2, Missouri.

(Endorsed): Filed in U. S. Court of Appeals, August 7, 1952.

ORDER OF SUBMISSION

September Term, 1952.

Monday, September 15, 1952.

This cause having been called for hearing in its regular order, argument was commenced by Mr. David Ferber, Special Counsel, Securities and Exchange Commission, for appellant, continued by

Mr. Thomas S. McPheeters for appellee, and concluded by Mr. David Ferber, Special Counsel, Securities and Exchange Commission, for appellant.

Thereupon, this cause was submitted to the Court on the printed record and briefs of counsel filed herein.

OPINION

UNITED STATES COURT OF APPEALS FOR THE EIGHTH CIRCUIT.

No. 14,611

SECURITIES AND EXCHANGE COMMISSION, APPELLANT

vs.

RALSTON PURINA COMPANY, APPELLEE

Appeal from the United States District Court for the Eastern District of Missouri

[November 21, 1952]

David Ferber, Special Counsel, Securities and Exchange Commission, (Roger S. Foster, General Counsel, Robert L. Randall, Alexander J. Brown, Jr., and Robert J. Sugrue, Attorneys, and Thomas B. Hart, Regional Administrator, Securities and Exchange Commission, were with him on the brief) for Appellant.

Thomas S. McPheeters (George W. Simpkins and Bryan, Cave, McPheeters & Roberts were with him on the brief) for Appellee.

Before SANBORN, WOODROUGH, and COLLET, *Circuit Judges*

SANBORN, *Circuit Judge*:

The Securities and Exchange Commission has appealed from a judgment dismissing an action brought by it in October, 1951, under Section 22(a) of the Securities Act of 1933, 48 Stat. 86, 15 U.S.C.A. § 77v(a), against the Ralston Purina Company to enjoin it from using the mails or the instruments of interstate commerce in selling or offering to sell its common stock.

In its complaint the Commission alleged that the Company was engaged in and was about to engage in acts or practices violative of Section 5(a) of the Act, 48 Stat. 77, 15 U.S.C.A. § 77c(a);¹ that

¹ "Prohibitions relating to interstate commerce and the mails.

"Sec. 5. (a) Unless a registration statement is in effect as to a security, it shall be unlawful for any person, directly or indirectly—

"(1) to make use of any means or instruments of transportation or communication of interstate commerce or of the mails

since the fall of 1947 the Company has been selling its common stock, and in the sale of the stock has been using the mails and instruments of interstate commerce, and that no registration statement with respect to the stock has been in effect with the Commission.

The Company denied that it was engaging or was about to engage in acts and practices violative of Section 5(a) of the Act. It denied that it had sold or offered for sale its common stock except in limited quantities to carefully selected key employees pursuant to a long-established custom of the Company to encourage such employees to become owners of stock. The Company stated that it was of the opinion that what it had done in making its unregistered common stock available to key employees did not constitute a public offering and was not violative of Section 5(a) of the Act; but that no sales of its stock offered in 1951 had been consummated pending a determination of its right to sell such unregistered stock to the key employees who had applied for it. The Company admitted using the mails or instruments of interstate commerce in offering its key employees an opportunity to purchase common stock.

The sole issue at the trial of the case in the District Court, and the sole question here, is whether the Company can follow its policy of making available each year for purchase a limited amount of its common stock to a select group of employees regarded as key employees, without registering the stock with the Commission.

The question turns upon the interpretation and scope of Section 4(1) of the Act as amended, 48 Stat. 77; 48 Stat. 906; 15 U.S.C.A. § 77d(1), which exempts from the provisions of Section 5(a) "transactions by an issuer not involving any public offering." The District Court concluded that what the Company had done in selling and offering to sell common stock to key employees involved a private and not a public offering of stock, and that, by virtue of Section 4(1) of the Act, the Company was not required to register its common stock with the Commission. 102 F. Supp. 964. This conclusion the Commission asserts is clearly wrong.

Since Congress has furnished no precise standards for determining what constitutes a "public offering" of a security, it seems apparent that every case in which the question as to whether an offering is public or private arises will have to be decided largely upon the precise facts and circumstances surrounding the offering. The evidence in the instant case is virtually undisputed, although the Com-

to sell or offer to buy such security through the use or medium of any prospectus or otherwise; or

"(2) to carry or cause to be carried through the mails or in interstate commerce, by any means or instruments of transportation, any such security for the purpose of sale or for delivery after sale."

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DEC 22 1952

HAROLD S. WILCOX, CLERK

No. 512

In the Supreme Court of the United States

OCTOBER TERM, 1952

SECURITIES AND EXCHANGE COMMISSION, PETITIONER

v.

RAISTON PURINA COMPANY

**PETITION FOR A WRIT OF CERTIORARI TO THE UNITED
STATES COURT OF APPEALS FOR THE EIGHTH CIRCUIT**

mission questions the validity of certain inferences drawn by the District Court. It must be remembered, however, that the company as the prevailing party is entitled to the benefit of all inferences which reasonably can be drawn in its favor. *Cleo Syrup Corporation v. Coca-Cola Co.*, 8 Cir., 139 F. 2d 416, 418; *Skelly Oil Co. v. Holloway*, 8 Cir., 171 F. 2d 670, 674.

The factual situation with which we are confronted is briefly as follows:

The Company was organized in 1894. It manufactures feeds and cereals. It has grown until in 1951 it was operating 36 feed mills, 6 soy bean processing plants, 3 cereal mills, many warehouses and elevators, and 7,000 retail outlets. It has about 7,000 employees. The net sales of the Company's products in the fiscal year ending September 30, 1951, were in excess of \$340,000,000. Its branches are scattered throughout the United States. It does a nationwide business. The most rapid growth of the Company has taken place since 1940.

The Company has had continuity of management. Its founder is still active in its management. Most of its officers have spent their entire business lives in its employ. Its policy has been to promote its personnel from within the organization.

From the inception of the Company it has encouraged stock ownership by employees, particularly by key employees, and has from time to time made stock available to such employees. It sold stock to employees as early as 1911. About 80% of the Company's common stock is owned or controlled by employees, members of employees' families, or former employees, about 1,000 to 1,500 employees being stockholders. The Company has never sold any of its common stock to the public nor for the purpose of raising money. Sales of stock by the Company to employees have been limited exclusively to key employees.

In 1942 the Company sold 1,269 shares of common stock to 59 key employees, and in 1943 it sold 2,000 shares to 109 such employees. Thereafter for several years it sold none of its stock to key employees because most of them were stockholders; but, with the expansion of its business, it again offered them stock in 1947. In that year, as of October 1, the Company sold 6,984 shares to 243 key employees (of whom 187 were already stockholders) at \$47.50 a share. In 1948, as of September 30, the Company sold 1,120 shares to 20 key employees (of whom 18 were already stockholders) at \$50 a share. In 1949, as of October 3, it sold 10,000 shares to 414 key employees (of whom 267 already owned stock) at \$55 a share. In 1950, as of September 22, the Company sold 9,659 shares to 411 key employees (300 of whom already were stockholders) at \$70 a share. In September, 1951, the Company made 10,000 shares

available for purchase by key employees at \$80 a share. Of these employees, 167 applied for 3,769 shares of stock. Of the 167, 139 were stockholders. No stock has been sold to the applicants, due to this litigation.

The Company's definition of a key employee is as follows:

"A key employee of course can be an officer or a department head or an assistant to a department head but is not confined to an organization chart. It would include an individual who is eligible for promotion, an individual who especially influences others or who advises others, a person whom the employees look to in some special way, an individual, of course, who carries some special responsibility, who is sympathetic to management and who is ambitious and who the management feels is likely to be promoted to a greater responsibility."

Key employees are selected by the "top management" of the Company, after consulting with the men who manage the mills and have supervision over and direct contact with a substantial number of employees.

The reasons of the management for selling stock to key employees were stated to be as follows:

"We feel, sir, that that creates a greater efficiency with the company, because it draws employees of the company closer together. Many of our people come from the rural area, where proprietorship is a matter of great pride to them. The fact that they feel that they are owners, at least part owners, in the company, contributes to the morale, and we feel that the idea of breaking down the gap between the ownership and management is something that is highly desirable and something that contributed substantially to the success of the company."

Notification that stock was available to key employees came to them through the managers under whom they worked. The managers were told not to solicit orders for stock, but "simply to acquaint the people who had indicated an interest or whom they felt it was fair to notify of the situation."

During the past several years the Company has on September 30, the end of its fiscal year, paid bonuses to key employees. These have been substantially the same persons to whom stock was sold during these years. Many of them have wanted to invest their bonus money in the common stock of the Company. The common stock is an unlisted stock and there is only a limited over-the-counter market for it. Any substantial amount of competitive bidding might raise the market price artificially. That is one of the reasons why the Company attempted to make common stock available to the employees to whom bonuses were paid.

Since 1945 the Company has published a regular annual financial statement, which has been sent to all of its stockholders, furnished to banks and brokers more or less generally, and filed with the Securities and Exchange Commission, with which the Company's preferred stock was registered in 1945. Bi-monthly sales and production records are sent out to all the key people of the Company, and are available to any employee. The selection of key personnel to whom bonuses are paid and to whom stock is made available is not dependent upon payroll classification or the importance of the positions held. Stock has been purchased by those holding positions as trainees, clerks, and stenographers, as well as by those who are executives and managers. Those who have purchased stock from the Company have done so for purposes of investment. Resales of stock purchased by key employees have been negligible, --317 shares in 1947, none in 1948, 89 in 1949, and 45 in 1950. Of those employees who sold their stock, most had left the Company's employ.

The Company's estimate of the number of key employees to whom common stock was offered in 1951 was about 500. Since the evidence showed that stock was made available to substantially the same persons who received bonuses, and since in 1951 \$1,575,000 was paid out in bonuses to 674 employees, it seems probable that the estimate of the Company was low. However, approximately 75% of the key employees to whom bonuses were paid, and to whom stock was offered, during the years 1947 to 1950, inclusive, were already stockholders of the Company. Presumably, they were advised of its financial condition through its annual reports. The other 25% might reasonably be believed to have some knowledge of the Company's progress from sales and production records. More than 80% of the employees who applied for stock in 1951 were already stockholders of the Company.

Lewis Stuart, a Vice-President, Secretary, and a Director of the Company, who testified in its behalf, said, in response to the question as to why the Company did not register the stock offered to employees in 1951:

"The reasons are very definite. Personally, I have been through a registration just once, and when we started to register our preferred stock, we started in January. It took until May 15th before we could get the schedules. It cost us tens of thousands of dollars. Now, when you are putting out an issue, or when you are selling to a group, to a small intimate group, if the sale is between three or four or ten thousand shares and you have to spend for a hundred special accountants' fees, lawyers' fees, printing expenses, travel expenses, clerical expenses--there is a host of expenses in connection with the registration which makes it entirely unwarranted to spend that much money to accommodate key employees. The

big factor is a very important factor. We come to the end of the year; we cannot wait 3½ months to know what we are going to do; we have to deal with our employees, pay our bonuses, and make our deals then. If we have to wait for 3½ months, or if we have to wait for 2½ months, which probably would be a pretty fair length of time, and then pay financial extras, legal people, accounting people, printing, long distance telephone and telephone calls, clerical expenses, travel, and pile all that expense on the sale of a few shares of stock to an intimate group, we feel that that is entirely unwarranted, and it is a matter of economy on our part * * *"

The Company had the burden of proving that its offering of stock to its key employees came within the exemption provided by Section 4(1) of the Act, which, being an exception to the general policy of the Act, is to be strictly construed and may not receive such a broad construction as would be destructive of the plain purpose which caused the Act to be adopted. *Spokane & Inland Empire Railroad Co. v. United States*, 241 U.S. 344, 350; *Securities and Exchange Commission v. Sunbeam Gold Mines Co.*, 9 Cir., 95 F. 2d 699, 701. The purpose of the Act is to prevent, so far as possible, frauds in the sale of securities by requiring that investors be furnished with adequate information relative to securities offered to them. In *Securities and Exchange Commission v. Chinese Consolidated Benevolent Association, Inc.*, 2 Cir., 20 F. 2d 738, 740, the court said: "But the aim of the Securities Act is to have information available for investors. This objective will be defeated if buying orders can be solicited which result in uninformed and improvident purchases." The rule requiring the strict construction of statutory language does not require that the words of an enactment be given their narrowest meaning or that the law makers' evident intent be disregarded. *United States v. Corbett*, 215 U.S. 233, 242-243; *United States v. Giles*, 300 U.S. 41, 48.

In determining whether the Act requires that securities be registered, the honesty of the issuer, the soundness of the securities offered, or the delay and expense which may be involved in securing their registration, are not of material consequence.

The problem presented by this case is somewhat reminiscent of that considered by the Supreme Court in *Welch v. Helvering*, 290 U.S. 111, in which the Court was required to determine whether certain expenditures made by a taxpayer were "ordinary and necessary expenses." In that case, Mr. Justice Cardozo said (pages 114-115 of 290 U.S.): "Here, indeed, as so often in other branches of the law, the decisive distinctions are those of degree and not of kind. One struggles in vain for any verbal formula that will supply a ready touchstone. The standard set up by the statute is not a rule of law; it is rather a way of life. Life in all its fullness must supply the answer to the riddle."

It would, of course, be unreasonable to suppose that Congress, in exempting from the provisions of Section 5(a) of the Act "transactions by an issuer not involving any public offering," intended, that an offering not open to everyone was exempt. It would be equally unreasonable to rule that the language of Section 4(1) of the Act did not mean what it purported to mean or that no offering was exempt which the Commission might regard as a public offering.

The Commission is of the opinion that the exemption provided by Section 4(1), when read in the light of its legislative history, of the construction placed upon it by the Circuit Court of Appeals of the Ninth Circuit in *Securities and Exchange Commission v. Sunbeam Gold Mines Co.*, 95 F. 2d 699, and of the Commission's own administrative interpretation of the section, does not exempt offerings such as those in suit.

The legislative history upon which the Commission relies is that referred to by the Circuit Court of Appeals of the Ninth Circuit in the *Sunbeam Gold Mines Co.* case, *supra*, in which it was held that an offering of securities by that company to its 323 stockholders and to 207 stockholders of another company to raise money to effect a merger of the two companies was a public offering and was therefore not exempt from registration. In that case the court said (pages 701-702 of 95 F. 2d):

"The bill as originally passed by the House, following the recommendation of the Committee on Interstate and Foreign Commerce, exempted from registration requirements the issuance of additional capital stock of the issuer among its own stockholders exclusively, where no commission or other remuneration was paid or given in connection with the sale or distribution, H.R. 5480, 73d Cong., 1st Sess., Sec. 4(3). This original House draft also exempted 'transactions by an issuer not with or through an underwriter and not involving any public offering. . . . ' Section 4(1). In reporting to the House, the Commerce Committee said of this exemption: 'Paragraph (1) broadly draws the line between distribution of securities and trading in securities, indicating that the act is, in the main, concerned with the problem of distribution as distinguished from trading. It therefore exempts all transactions except by an issuer, underwriter, or dealer. Again, it exempts transactions by an issuer unless made by or through an underwriter so as to permit an issuer to make a *specific or isolated sale of its securities to a particular person*, but insisting that if a sale of the issuer's securities should be made generally to the public that that transaction shall come within the purview of the act.' (Italics supplied.) H.R. Rep. No. 85, 73d Cong., 1st Sess., p. 15.

"Thus on the first draft of the measure it is clear that neither the Committee nor the House considered the test of 'public offering'

to be the inclusion or noninclusion of nonstockholders of the issuer in the group to whom the security was to be issued.

"When the Senate received the measure, it eliminated the exemption contained in section 4(3), *supra* (including an exemption of stock dividends). The bill then went to conference, where the Senate's elimination of this exemption was approved by the Managers on the Part of the House, who stated, H.R. Rep. No. 152, 73d Cong., 1st Sess. p. 25: 'The House provision (Section 4(3)) exempting stock dividends and the sale of stock to stockholders is omitted from the substitute since stock dividends are exempt without express provision as they do not constitute a sale, not being given for value. *Sales of stock to stockholders become subject to the act unless the stockholders are so small in number that the sale to them does not constitute a public offering.*' (Italics supplied.)

"Again, in 1934, when the Securities Act was amended, 15 U.S.C.A. § 77 b et seq. and notes, a proposal to exempt from registration securities offered by an issuer to its employees was rejected by the Committee of Conference of the two Houses. In this connection, the Managers on the Part of the House stated: 'The conferees eliminated the third proposed amendment to this subsection on the ground that the participants in employees' stock-investment plans may be in as great need of the protection afforded by availability of information concerning the issuer for which they work as are most other members of the public.' H.R. Rep. No. 1838, 73d Cong., 2d Sess., p. 41.

"These Reports clearly demonstrate that the Congress did not intend the term 'public offering' to mean an offering to any and all members of the public who cared to avail themselves of the offer, and that an offering to stockholders, other than a very small number, was a public offering."

The District Court, in the instant case, in considering the legislative history of Section 4(1) of the Act, quoted the colloquy between Senator Fletcher, a member of the Committee of Conference which considered the proposed amendment offered in 1934 to exempt the sale of stock by an issuer to its employees, and Senator Hastings who had submitted the amendment (see page 967 of 102 F. Supp.). Senator Fletcher, in substance, advised the Senate that the proposed amendment was rejected because a majority of the members of the conference committee were of the opinion that Section 4(1) of the Act already exempted an offer of stock by an employer to its employees.

If Congress had intended that the exemption provided by Section 4(1) of the Act was to apply only to specific or isolated sales or offerings of securities by an issuer to a particular person or to a nu-

merically small group, it is reasonable to believe that it would have said so, and would not have left the scope of the exemption to inferences to be drawn from committee reports or the rejection of a proposed amendment offered at a subsequent session of Congress. The Supreme Court has said: "Whatever was said in the debates on the bill or in the reports concerning it, preceding its enactment or during its enactment, must give way to its language, or, rather, all the reasons that induced its enactment and all of its purposes must be supposed to be satisfied and expressed by its words, * * *". *Mackenzie v. Hare*, 239 U.S. 299, 308. See, also, *Warner v. Dworsky*, 8 Cir., 194 F. 2d 277, 279, certiorari denied, 343 U.S. 965; *Missouri Pac. R. Co. 5 1/4% Secured Serial Bondholders' Committee v. Thompson*, 8 Cir., 194 F. 2d 799, 803-804. It is fair to assume that the words used by Congress in expressing its intent more nearly reflect that intent than would any other words which were readily available. Assuming, however, that recourse properly may be had to the legislative history of Section 4(1) of the Act, we agree with the District Court that there is nothing in that history which demonstrates that the offerings in suit do not fall within the exemption provided by that Section.

We do not regard the decision of the District Court in the instant case as inconsistent with the opinion of the Ninth Circuit in the *Sunbeam Gold Mines Co.* case, the correctness of which as applied to the facts of that case we do not doubt. There are obvious distinctions between an offering of securities to all of the stockholders of two companies, parties to a proposed merger, to raise funds to effectuate the merger, and an offering, without solicitation, of common stock to a selected group of key employees of the issuer, most of whom are already stockholders when the offering is made, with the sole purpose of enabling them to secure a proprietary interest in the company or to increase the interest already held by them.

The administrative interpretation of Section 4(1) of the Act, referred to by the Commission, is reflected by an opinion of John J. Burns, its General Counsel, in 1934, which is found in 11 Fed. Reg. (1946), § 231.285, page 10,952, and which, for convenience, we have set out in the margin.² This opinion discusses the factors to be

²The opinion has been previously expressed by this office that an offering of securities to an insubstantial number of persons is a transaction by the issuer not involving any public offering, and hence an exempted transaction under the provisions of Section 4(1) of the Securities Act. Furthermore, the opinion has been expressed that under ordinary circumstances an offering to not more than approximately twenty-five persons is not an offering to a substantial number and presumably does not involve a public offering.

"As a result of such opinions there appears to be developing a

considered in attempting to determine whether an offering is public or private. These factors are stated to be: (1) the number of offerees and their relationship to each other and to the issuer; (2) the number of units offered; (3) the size of the offering; and (4) the manner of offering.

It is evident that the Commission considers that the offerings in the instant case were made to too many employees and involved too many shares of stock to be nonpublic offerings, and that if Section 4(1) of the Act is construed to exempt such offerings the remedial purposes of the Act may be impaired. We sympathize with

general practice on the part of issuers desiring to avoid registration of their securities to seek to dispose of the same to insurance companies or other institutions, which, at the time of purchase, state that they are acquiring such securities for investment and not with a view to distribution.

"I would call your attention to the fact that in previous opinions it has been expressly recognized that the determination of what constitutes a public offering is essentially a question of fact, in which all surrounding circumstances are of moment. In no sense is the question to be determined exclusively by the number of prospective offerees. I conceive that the following factors in particular should be considered in determining whether a public offering is involved in a given transaction:

1. *The number of offerees and their relationship to each other and to the issuer.* You will note that this does not mean the number of actual purchasers, but the number of persons to whom the security in question is offered for sale. The word 'offering' in this sense should not be limited to those cases wherein a formal proposal for a firm commitment is submitted. Any attempt to dispose of a security should be regarded as an offer. I have very serious doubt as to whether in many of those cases where it is stated that an offering is to be made only to an insubstantial number of persons, there may not be preliminary conversations for the purpose of ascertaining which of various possible purchasers would be willing to accept an offer of the security in question if it were made to them. Any such preliminary negotiations or conversations with a substantial number of prospective purchasers would, in my opinion, cause the offering in question to be a public offering, thereby necessitating prior registration of the security in question.

"Again, in determining what constitutes a substantial number of offerees the basis on which the offerees are selected is of the greatest importance. Thus, an offering to a given number of persons chosen from the general public on the ground that they are possible purchasers may be a public offering even though an offering to a larger number of persons who are all the members of a particular

the efforts of the Commission to restrict the exemption granted by Section 4(1) to the narrowest possible scope, but we do not think that the intra-organizational offerings of stock by the Company, unaccompanied by any solicitation, which have resulted in a limited distribution of stock, for investment purposes, to a select group of employees considered by the management to be worthy of retention and probable future promotion, is to be excluded from the exemption of nonpublic offerings granted by Congress. There is, we think, virtually no possibility that these offerings, if continued, will frustrate or impair the purpose of the Act.

class, membership in which may be determined by the application of some preexisting standard, would be a nonpublic offering. However, I have no doubt but that an offering restricted to a particular group or class may nevertheless be a public offering if it is open to a sufficient number of persons.

"I also regard as significant the relationship between the issuer and the offerees. Thus, an offering to the members of a class who should have special knowledge of the issuer is less likely to be a public offering than is an offering to the members of a class of the same size who do not have this advantage. This factor would be particularly important in offerings to employees, where a class of high executive officers would have a special relationship to the issuer which subordinate employees would not enjoy.

"2. *The number of units offered.* If the denominations of the units are such that only an insubstantial number of units is offered, presumably no public offering would be involved. But where many units are offered in small denominations, or are convertible into small denominations, there is some indication that the issuer recognizes the possibility, if not the probability, of a distribution of the security to the public generally. The purpose of the exemption of nonpublic offerings would appear to have been to make registration unnecessary in these relatively few cases where an issuer desires to consummate a transaction or a few transactions and where the transaction or transactions are of such a nature that the securities in question are not likely to come into the hands of the general public.

"In connection with a consideration of the number of units offered, I would also consider whether the same or other securities of the same issuer are being offered at the same time. I feel that this circumstance has a bearing on the character of the offering.

"3. *The size of the offering.* It should be noted that the exemption of Section 4(1) is of transactions by an issuer *not involving* any public offering. In view of this language, it would appear to be proper to consider not merely the specific transaction or transactions between the issuer and the initial purchasers, but also the extent to which a later public offering of all or part of the securities sold

The judgment of a trial court will not be reversed by this Court unless it can demonstrate, at least to its own satisfaction, that the judgment is wrong. That we are unable to do in this case. Our opinion is strictly confined to the precise facts here involved, and is not to be taken as a ruling that employees' stock investment plans are generally within the exemption granted by Section 4(1). If the offerings with which we are concerned were made to all employees or to employees selected at random or by lot or without any logical basis for the selection, a different question would be presented.

The judgment appealed from is affirmed.

by the issuer is likely. Hence I feel that this exemption was intended to be applied chiefly to small offerings, which in their nature are less likely to be publicly offered even if redistributed.

For the same reason I feel that a material consideration is whether the security in question is part of an issue already dealt in by the public, either on a national securities exchange or on the over-the-counter market, or, within the reasonable contemplation of the parties, is likely thus to be dealt in shortly after its issuance. This factor again may indicate whether public distribution of the security in question is likely within a reasonable time.

"4. *The manner of offering.*" I have already indicated my opinion that the purpose of the exemption of nonpublic offerings is largely limited to those cases wherein the issuer desires to consummate a few transactions with particular persons. Consequently, I feel that transactions which are effected by direct negotiations by the issuer are much more likely to be nonpublic than those effected through the use of the machinery of public distribution.

"I have gone into this matter at length in order that you may be apprised of the many elements which in my opinion go into the determination of what constitutes a transaction not involving any public offering. There may be some situations where all the factors are so clear that it would be possible to express a definite opinion. In a situation such as you present, however, I feel that the offering would be carefully scrutinized by any court before which it may come and that any letter which purported to describe the situation, and on which my opinion would necessarily be based, could not adequately advise as to the various factors which are involved.

"I call your attention to the fact that any dealer who might subsequently purchase from an initial purchaser the securities which you propose to offer, would be required to satisfy himself that the initial purchaser had not purchased with a view to distribution. If the initial purchaser had purchased with this intent, he would be an underwriter, and sales by a dealer of securities bought by him from such an initial purchaser would, as a general rule, not be exempt until at least a year after the purchase of the securities by

JUDGMENT

UNITED STATES COURT OF APPEALS FOR THE EIGHTH
CIRCUIT, SEPTEMBER TERM, 1952

No. 14611

Friday, November 21, 1952

SECURITIES AND EXCHANGE COMMISSION, APPELLANT

vs.

RALSTON PURINA COMPANY, A MISSOURI CORPORATION

Appeal from the United States District Court for the Eastern District of Missouri

This cause came on to be heard on the record from the United States District Court for the Eastern District of Missouri, and was argued by counsel.

On Consideration Whereof, it is now here ordered and adjudged by this Court, that the judgment of the said District Court, in this cause, be, and the same is hereby, affirmed.

November 21, 1952.

STIPULATION IN LIEU OF STAY OF MANDATE

It is hereby stipulated by and between the Securities and Exchange Commission, appellant, and Ralston Purina Company, appellee, by their respective counsel, that the appellee will not resume the offering of its common stock to its employees, commenced

the dealer. The sale of unregistered securities to a limited number of initial purchasers, therefore, leads to a practical situation in which such initial purchasers may have difficulty in disposing of the securities purchased by them. Any opinion which I might render in connection with the proposed offering might, I fear, be availed of by the issuer or by an initial purchaser as a means of satisfying a dealer, at a later date, that he might purchase the securities in question and market them without risk of violating the Act. You will appreciate that my opinion would not actually have this effect, since in the case of each transaction there would be involved various matters of fact on which I am not in a position to express an opinion.

"Accordingly, it seems a much wiser policy for me not to express an opinion in the situation which you present as to whether a public offering is involved."

in September, 1951, pursuant to a resolution of its board of directors adopted September 11, 1951, and will not otherwise sell its common stock to its employees, until December 23, 1952. It is also stipulated that if prior to December 23, 1952, the attorney for the appellee is notified that a petition for a writ of certiorari, record, and supporting brief have been filed with the Supreme Court, the appellee shall continue to refrain from selling its stock to its employees until final disposition by the Supreme Court.

It is further stipulated that this stipulation shall be part of the record herein.

Dated Dec. 2, 1952.

ROGER S. FOSTER,
General Counsel.

DAVID FERBER,
Special Counsel.

SECURITIES AND EXCHANGE COMMISSION,
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Attorney for Appellee.

Approved for the Court, December 5, 1952, E. E. Koch, Clerk.

(Endorsed): Filed in U. S. Court of Appeals, Dec. 5, 1952.

CLERK'S CERTIFICATE

UNITED STATES COURT OF APPEALS FOR THE EIGHTH
CIRCUIT

I, E. E. Koch, Clerk of the United States Court of Appeals for the Eighth Circuit, do hereby certify that the foregoing contains the printed record on which the appeal from the United States District Court for the Eastern District of Missouri was heard in said Court of Appeals, and full, true and complete copies of the pleadings, record entries and proceedings, including the opinion, had and filed in the United States Court of Appeals for the Eighth Circuit, except the full captions, titles and endorsements omitted in pursuance of the rules of the Supreme Court of the United States, in a certain cause in said Court of Appeals wherein Securities and Ex-

change Commission was Appellant and Ralston Purina Company, a Missouri corporation, was Appelle, No. 14611.

I do further certify that on the 9th day of December, A. D. 1952, a mandate was issued, out of said Court of Appeals in said cause, directed to the Judges of the United States District Court for the Eastern District of Missouri.

In Testimony Whereof, I hereunto subscribe my name and affix the seal of the United States Court of Appeals for the Eighth Circuit, at office in the City of St. Louis, Missouri, on the 12th day of December, A. D. 1952. (Signed) E. E. Koch, Clerk of the United States Court of Appeals for the Eighth Circuit. (SEAL.)

Supreme Court of the United States

No. 512, October Term, 1952

SECURITIES AND EXCHANGE COMMISSION, PETITIONER

v.

RALSTON PURINA COMPANY

Order allowing certiorari

Filed March 9, 1953.

The petition herein for a writ of certiorari to the United States Court of Appeals for the Eighth Circuit is granted, and the case is transferred to the summary docket.

And it is further ordered that the duly certified copy of the transcript of the proceedings below which accompanied the petition shall be treated as though filed in response to such writ.

question emphasizes that the exemption was meant to apply only to offerings to "an insubstantial number of persons" (R. 97). The importance of the number of offerees is again stressed in this opinion when, in referring to the significance of the offering being restricted to a particular class, the opinion stated (R. 98):

However, I have no doubt but that an offering restricted to a particular group or class may nevertheless be a public offering if it is open to a sufficient number of persons:

This administrative interpretation was based not only on the language of the statute but on its legislative history. As we have pointed out, *supra*, fn. 6, Congress specified that the exemptions from the registration provisions of the Act

followed the practice of forwarding a copy of this particular opinion to persons making inquiry as to whether registration of particular issues was required. Actually, in the instant case, a copy of this release was forwarded to the respondent before the 1950 offering was made (R. 77).

The weight to be accorded such an interpretation is suggested in *Securities and Exchange Commission v. Associated Gas & Electric Co.*, 99 F. 2d 795, 798 (C. A. 2): "Moreover, we are dealing with a new act the administration of which is the peculiar function of the Securities and Exchange Commission. One of the principal reasons for the creation of such a bureau is to secure the benefit of special knowledge acquired through continuous experience in a difficult and complicated field. Its interpretation of the act should control unless plainly erroneous. In no other way can the objects of the act be attained without constant and disconcerting friction." See *National Labor Relations Board v. Denver Building Council*, 341 U. S. 675, 690-692; *Boutell v. Walling*, 327 U. S. 463, 470-471.

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were to be restricted to a narrow group of cases. And House Report No. 85, 73d Cong., 1st Sess., 1933, at page 16, makes it clear that the private-offering exemption was intended to apply to "isolated sales of securities."¹⁰ Congress, a year later, rejected an amendment that would have exempted offerings to employees. The report of the House Conference stated (H. Rep. 1838, 73d Cong., 2d Sess., 1934, p. 41):

* * * the participants in employees' stock-investment plans may be in as great need of the protection afforded by availability of information concerning the issuer for which they work as are most other members of the public.¹¹

The Commission's release notes that an "offering to the members of a class who should have special knowledge of the issuer is less likely to be a public offering than is an offering to the members of a class of the same size who do not have this advantage" (R. 98). With specific regard to offerings to employees, it was declared that "this factor

¹⁰ This position was in line with the interpretation which the House of Lords had given the English Companies' Act which uses the phrase, "offering to the public." *Nash v. Lynde* (1929) A. C. 158. The same approach is reflected in the decisions under the state blue sky laws. See, e. g., *People v. Montague*, 280 Mich. 610, 274 N. W. 347, 351.

¹¹ Cf., however, 78 Cong. Rec. (1934) 10182, noted by the court below at R. 95, where a contrary construction with respect to the rejection of that amendment was made on the floor of the Senate by Senator Fletcher, a member of the Conference Committee.

In the Supreme Court of the United States

OCTOBER TERM, 1952

No. 512

SECURITIES AND EXCHANGE COMMISSION, PETITIONER
v.

RALSTON PURINA COMPANY

*PETITION FOR A WRIT OF CERTIORARI TO THE UNITED
STATES COURT OF APPEALS FOR THE EIGHTH CIRCUIT*

The Solicitor General, on behalf of the Securities and Exchange Commission, prays that a writ of certiorari be issued to review the judgment of the United States Court of Appeals for the Eighth Circuit, entered November 21, 1952, which affirmed the judgment entered on February 20, 1952, by the United States District Court for the Eastern District of Missouri, Eastern Division.

OPINIONS BELOW

The opinion of the Court of Appeals (R. 88-99) is not yet officially reported. The opinion of the District Court (R. 46-54) is reported in 102 F. Supp. 964.

JURISDICTION

The judgment of the Court of Appeals was entered on November 21, 1952 (R. 100). The jurisdiction of this Court is invoked under 28 U. S. C. 1254. See also Section 22 (a) of the Securities Act of 1933 (15 U. S. C. 77v(a)).

QUESTION PRESENTED

Whether the exemption from registration provided in the Securities Act of 1933 for transactions "not involving any public offering" applies to an offering by a corporation to an indeterminate group of more than five hundred employees, including those who had no access to information concerning the issuer's affairs.

STATUTE INVOLVED

The following provisions of the Securities Act of 1933, 48 Stat. 74, as amended, 48 Stat. 906, 15 U. S. C. 77a, *et seq.*, are pertinent:

SEC. 4. The provisions of section 5 shall not apply to any of the following transactions:

(1) * * * transactions by an issuer not involving any public offering; * * *

* * * * *

[15 U. S. C. 77d]

SEC. 5. (a) Unless a registration statement is in effect as to a security, it shall be unlawful for any person, directly or indirectly—

(1) to make use of any means or instruments of transportation or communication

in interstate commerce or of the mails to sell or offer to buy such security through the use or medium of any prospectus or otherwise; or

(2) to carry or cause to be carried through the mails or in interstate commerce, by any means or instruments of transportation, any such security for the purpose of sale or for delivery after sale.

(b) It shall be unlawful for any person, directly or indirectly—

(1) to make use of any means or instruments of transportation or communication in interstate commerce or of the mails to carry or transmit any prospectus relating to any security registered under this title, unless such prospectus meets the requirements of section 10; or

(2) to carry or to cause to be carried through the mails or in interstate commerce any such security for the purpose of sale or for delivery after sale, unless accompanied or preceded by a prospectus that meets the requirements of section 10.

[15 U. S. C. 77e]

STATEMENT

This action was instituted by the Securities and Exchange Commission to enjoin Ralston Purina Company from selling its \$25 par value common stock in violation of the registration requirements of Section 5 (a) of the Securities Act of 1933 (45 U. S. C. § 77e (a)) (R. 1-3). As the court

of appeals pointed out, "The evidence in the instant case is virtually undisputed, although the Commission questions the validity of certain inferences drawn by the District Court" (R. 89-90).

Ralston Purina Company, a manufacturer and distributor of feed and cereals, with approximately 7,000 employees in its numerous mills, plants, warehouses, and stores scattered throughout the country (R. 4, 6, 57, 72), has been selling its common stock to many of its employees for a number of years. The actual number of employees to whom the Company's offerings have been made is not known since the Company kept no record of these offerees, but the offerees each year have admittedly exceeded the actual purchasers (R. 8-9). These latter numbered 414 employees in 1949, purchasing from the Company a total of 10,000 shares for \$550,000 (R. 19). In 1950, 411 employees purchased from the Company a total of 9,659 shares for \$676,130 (R. 29). The court below stated that the Company's estimate of 500 offerees in 1951 was probably low (R. 92). Prior to the suspension of the offering that year, pending this litigation, 167 offerees had applied for a total of 3,769 shares of stock for \$301,520 (R. 39).

Among the purchasers of stock from the Company were employees whose total annual compen-

sation was as low as \$2,700 (in 1949), \$2,435 (in 1950), and \$3,107 (in 1951) (R. 46). Purchasers of stock from the Company in these and prior years included various clerical employees,¹ numerous salesmen (R. 16, 17, 22-25, 35-38), foremen (R. 21, 34), and other employees in more responsible positions.

Although the courts below referred to the offerings as being made to "key employees" (R. 93), the evidence indicates that the Company used this term to include any employee who might have "indicated an interest" in the purchase of the stock (R. 58). The corporate resolution authorizing the 1951 offering placed no restriction on employee offerees who inquired how to purchase (R. 45),² and the letter of notification to the Com-

¹ The purchasers were in such payroll classifications as: Assistant in Animal Pathological Dept. (R. 13); Assistant District Salesman (R. 20); Clerical Assistant in Cashier Dept. (R. 20); Clerical Assistant to Accounting Manager (R. 20); Dog Chow Specialist (R. 37); Electrician Maintenance Dept. (R. 20); Junior Grain Merchandiser (R. 19); Laboratory Assistant (R. 21); Maintenance Assistant (R. 31); Mill Office Clerk (R. 40); Mill Production Trainee (R. 32); Office Production Assistant (R. 31); Order-Credit Trainee (R. 40); Production Trainee (R. 21); Secretary to Production Manager (R. 13); Secretary to Regional Sales Manager (R. 36); Shipping Clerk (R. 21); Stenographer to Staff Manager (R. 15); Stock Clerk (R. 23); Supervisor, Mail Section (R. 20); Traffic Clerk (R. 21).

² Similar resolutions had been adopted in previous years (R. 54).

pany's branch managers indicated that any employees taking the initiative might buy (R. 66). The Company's representative testified that when stock was available to employees, the procedure was as follows:

The president, speaking for the board of directors, notified the officers, who in turn notified the managers working directly under them, that the company had or was about to make some stock available. They [the managers] very carefully were told not to solicit in any way orders for stock, but simply to acquaint the people who had indicated an interest or whom they felt it was fair to notify of the situation. [R. 58-59.]

Some information concerning the financial affairs of the Company had been sent to those of the offerees who were already stockholders (R. 67-72), but a substantial portion of the offerees were not stockholders (R. 11-44). The corporate officer who testified stated that figures available to him as an officer "were not available to all of the so-called key employees" (R. 66).

The district court denied the ~~injunction~~ sought by the Commission on the ground that the sales were within the exemption from registration provided in Section 4 (1) of the Act for "transactions by an issuer not involving any public offering." The court below affirmed.

REASONS FOR GRANTING THE WRIT

1. Although the court below attempted to find distinctions on the facts, it is our position that a conflict exists between this case and *Securities and Exchange Commission v. Sunbeam Gold Mines Co.*, 95 F. 2d 699 (C. A. 9).³ The essence of that case was that the private-offering exemption from registration does not apply when an offering is made to a considerable group of persons who have no intimate knowledge of the issuer's finances and therefore need the protection of registration. There, this theory was applied to a set of facts in which an offering had been made to about 530 persons, some stockholders and some not stockholders, in connection with a proposed corporate merger. The holding was not dependent, however, upon those particular facts but upon the court's recognition of the con-

³ The *Sunbeam* decision was cited and approved in the following cases: *Merger Mines Corporation v. Grismer*, 137 F. 2d 335, 341 (C. A. 9, 1943) (where an offering to 1,100 stockholders was found to be a public offering); *Kaufman v. United States*, 163 F. 2d 404, 411 (C. A. 6, 1947) (where the trial court's charge to the jury on "public offering" was sustained on the basis of the *Sunbeam* decision); *Corporation Trust Co. v. Logan*, 52 F. Supp. 999, 1002 (D. Del. 1943) (where the court cited with approval the following *Sunbeam* language: "An offering to stockholders, other than a very small number [is] a public offering * * *"); *Campbell v. Degenther*, 97 F. Supp. 975, 977 (W. D. Pa. 1951) (where the court cited the *Sunbeam* case for the following proposition: "An offering of securities under the Securities Act of 1933 may be a public offering even though confined to stockholders of an offering company").

gressional intent that, however honest the issuer and whatever his motives, prospective purchasers are entitled to the full information provided by the Act unless they constitute a class which by reason of special circumstances does not require the protection of the Act.

The court below specifically rejected the interpretation of the Court of Appeals for the Ninth Circuit which held that the private offering exemption was intended to apply only to isolated sales of securities to a very limited number of offerees. The court's attempted distinction is without real substance. Specifically, the court stated (R. 96):

We do not regard the decision of the District Court in the instant case as inconsistent with the opinion of the Ninth Circuit in the *Sunbeam Gold Mines Co.* case, the correctness of which as applied to the facts of that case we do not doubt. There are obvious distinctions between an offering of securities to all of the stockholders of two companies, parties to a proposed merger, to raise funds to effectuate the merger, and an offering, without solicitation, of common stock to a selected group of key employees of the issuer, most of whom are already stockholders when the offering is made, with the sole purpose of enabling them to secure a proprietary interest in the company ~~or~~ to increase the interest already held by them.

It cannot be denied that there are differences between the two cases, but it is respectfully suggested that these differences are not significant in determining the application of the Act.

The first difference pointed out by the court below is that the motives of the offerors were not the same (R. 96). This is true, but nowhere in the terms of the Act or in its legislative history is there any indication that Congress intended the motives of a seller of securities to govern whether or not registration was necessary. To recognize such a basis for exemption would be to widen the exemption so that it would apply to offerings not only to employees but perhaps also to stockholders, to customers, or even to groups on the basis of ties of nationality.

The second distinction suggested is that the offering was made without solicitation (R. 96). By this the court below must mean that employees were not *urged* to buy, since the record makes it clear that the employees were notified of the opportunity to buy (R. 66). To consider this difference as significant would also constitute a dangerous precedent, since one of the oldest devices in marketing securities has been to make them seem hard to buy, to let the purchasers in on an "inside deal," or to make it seem that they, rather than the seller, are taking the initiative. The very terms of the Act itself recognize this situation by making a "solicitation of an offer to buy" the equivalent of an "offer to sell." (Sec-

tion 2 (3) of the Securities Act of 1933, 15 U. S. C. 77b (3)).

The third attempted distinction is that in this case the offering was made to "a selected group of key employees of the issuer, most of whom are already stockholders" (R. 96). There is no difference between the two cases with respect to some of the offerees being stockholders and some not, since that is common to both cases.⁴ And the distinction that the offerees are in this case employees is disclaimed by the court below as a sufficient reason unless they be a "selected" group of "key employees" (R. 96). But, as the facts here demonstrated, this is only a verbal distinction without substance, since, although the issuer used these words of art, the offering was open to any employee who expressed an interest in purchasing stock (see pp. 5-6; *supra*). The offering admittedly was to a class so large that the company could not name

⁴ The emphasis which the court below, in contrast to *Sunbeam*, places upon the circumstance that a number of the offerees were stockholders, overlooks the fact that Congress, in Section 3 (a) (9) of the Act (15 U. S. C. 77c (9)), dealt specifically with offerings to stockholders and limited that exemption to certain types of exchange offers. See 51 Harv. L. Rev. 360, 361 (1937). In any event, as was pointed out in *Sunbeam*, Congress rejected the thesis that the restriction of an offering to stockholders was a proper test for determining whether or not it was "public." Thus, it was stated that "sales of stock to stockholders become subject to the act unless the stockholders are so small in number that the sale to them does not constitute a public offering" (emphasis supplied). H. Rep. No. 152, 73d Cong., 1st Sess., p. 25.

the persons to whom it was made, nor even state the number of offerees.⁵

Moreover, even if, as the court below appeared to believe, the offering had actually been limited "to a select group of employees considered by the management to be worthy of retention and probable future promotion" (R. 98), such limitation being unrelated to the need for registration,⁶ could constitute no valid distinction from the *Sunbeam* case. The court assumed that "presumably" some of the employees, being already stockholders, were advised of the company's "financial condition through its annual reports" and that others

⁵ The only testimony offered directly as to the number of offerees related solely to the 1951 offering and appears at R. 62:

Mr. Stuart stated that the figure of 400 to 500 employees used in regard to the offerings in August or September 1951 represented "approximately the number of those individuals who had written to their superior and who had evidenced an interest in the purchase of stock if or when same is available, and that many of these requests were made by word of mouth." Mr. Stuart went on to point out that such a figure was only an estimate. "It was not certainly exactly 500, but it was not a thousand, but let us say, or any number substantially above that."

The court below found that it was "probable" that the estimate of the company of "about 500" offerees in 1951 "was low," and the company conceded that the offerees each year exceeded the number of purchasers (R. 8-9), which in both 1949 and 1950 had exceeded 400 (R. 19, 29).

⁶ The legislative history makes clear that the exemptions from registration were intended to be limited to situations where there was "no practical need" for registration or where "the public benefits" were "too remote." H. Rep. No. 85, 73d Cong., 1st Sess. (1933), p. 5.

"might reasonably be believed to have some knowledge of the Company's progress from sales and production records" (R. 92). There was no holding, however, nor any support in the record for a holding, that the annual reports of the company contained disclosures comparable to those which would have been required if the issue were registered,⁷ and the record in this case indicates how deceptive sales and production figures may prove as a measure of profits (R. 82, 63, 67). The record also shows that most of the actual purchasers were in positions divorced from management, and they could not be expected to have familiarity with the type of information required to be supplied by a statutory prospectus (R. 11-43).⁸

⁷ For the type of information which must be contained in a registration statement and in prospectus required to be delivered to purchasers under Section 5 (b) of the Act (15 U. S. C. 77e (b)), see Schedule A to the Securities Act (15 U. S. C. 77aa) and Section 10 (a) of the Act. (15 U. S. C. 77j).

No exemption is provided in the Securities Act for issuers filing annual reports under the Securities Exchange Act of 1934.

⁸ Testimony of the company's witness with respect to the availability of figures to the offerees appears at R. 66: "Mr. Stuart stated that depending on the individual all figures are available to some, and to a lesser degree to others. He also stated that he was vice president of the company and that figures were available to him showing the profits of Ralston Purina for a given month. He stated that these figures were available to many others but that they were not available to all of the so-called key employees."

The conflict between this case and the *Sunbeam* case strikes at the very heart of the Securities Act. That statute is built around the registration provisions of Section 5. As this Court has stated, "The essential purpose of the statute is to protect investors by requiring publication of certain information concerning securities before offered for sale." *A. C. Frost & Co. v. Coeur d'Alene Mines Corp.*, 312 U. S. 38, 40. There is here involved the basic problem of when an offeror is required to comply with Section 5. If the exemption from registration is to be broadened in the manner suggested by the opinion of the court below, many offerings which had heretofore been carried through under the protective features of the Securities Act will hereafter be made free and clear of that Act.

2. The opinion of the court below overturned, in disregard of the Congressional intent as expressed in committee reports, an administrative interpretation of long standing applicable to a constantly recurring problem.

At the outset of its administration of the Securities Act, the Commission released an opinion of its General Counsel, announcing the standards which it believed should govern the application of the exemption here involved." The release in

Securities Act Release No. 285, January 24, 1935, reprinted in full in the opinion below (R. 96-100). Throughout the years since the Act was adopted, the Commission has

would be particularly important" where a class of executive officers would have a special relationship to the issuer which subordinate employees would not enjoy. (R. 98). The holding below ignores these tests, in disregard of the over-all policy of the Act and the limited character of its exemptive provisions. The indefiniteness of the standards adopted by the court below could not be better illustrated than by their application here, where the issuer, by paying lip service to the concept of "key employees", has been able to avail itself of an exemption for an offering, made year after year, totaling more than \$1,500,000 of securities to hundreds of persons picked almost at random (see *supra*, p. 6). If the same concept were carried over to larger corporations, the exemption would then apply not to hundreds of employees but to thousands.

The question of whether an offering is public, and therefore must be registered, is a constantly recurring one raised with the Commission with great frequency. Probably no other interpretative problem receives so much attention. The Commission's consistent position, considered only in its application to offerings to employees, has resulted in many companies either registering offerings or complying with regulations exempting small issues from registration. The decision of the court below would, if allowed to stand, undermine the entire fabric of these interpretations.

CONCLUSION

Since the opinion of the court below appears to be in conflict with the opinion of the Court of Appeals for the Ninth Circuit, and since it erroneously reverses a long-standing administrative interpretation, this petition for certiorari should be granted.

Respectfully submitted.

WALTER J. CUMMINGS, JR.,
Solicitor General.

ROGER S. FOSTER,
General Counsel,
Securities and Exchange Commission.

DECEMBER 1952.

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No. 512

In the Supreme Court of the United States

OCTOBER TERM, 1952

SECURITIES AND EXCHANGE COMMISSION, PETITIONER

RALSTON PURINA COMPANY

**ON WRIT OF CERTIORARI TO THE UNITED STATES
COURT OF APPEALS FOR THE EIGHTH CIRCUIT**

BRIEF FOR SECURITIES AND EXCHANGE COMMISSION

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JURISDICTION

The judgment of the Court of Appeals was entered on November 21, 1952 (R. 100). The jurisdiction of this Court is invoked under 28 U.S.C. 1254. See also Section 22(a) of the Securities Act of 1933 [15 U.S.C. 77v(a)].

QUESTION PRESENTED

Whether the exemption from registration provided in the Securities Act of 1933 for transactions "not involving any public offering" applies to an offering by a corporation to an indeterminate group of more than five hundred employees, including those who had no access to information concerning the issuer's affairs.

STATUTE INVOLVED

Pertinent provisions of the Securities Act of 1933, 48 Stat. 74, as amended; 48 Stat. 905, 15 U.S.C. 77a *et seq.*, are set forth in an appendix.

The question in this case involves the construction of the second clause of Section 4(1) of the Act [15 U.S.C. 77d(1)], which reads as follows:

Sec. 4. The provisions of section 5 shall not apply to any of the following transactions:

(1) * * * transactions by an issuer not involving any public offering; * * *

STATEMENT

This action was instituted by the Securities and Exchange Commission to enjoin Ralston Purina Company from selling its \$25 par value common stock in violation of the registration requirements of Section 5(a) of the Securities Act of 1933 [15 U.S.C. 77e(a)] (R. 1-3). As the court of appeals pointed out, "The evidence in the instant case is virtually undisputed, although the Commission questions the validity of certain inferences drawn by the District Court" (R. 89-90).

Ralston Purina Company, a manufacturer and distributor of feed and cereals, has approximately 7,000 employees in its numerous mills, plants, warehouses, and stores scattered throughout the country.¹ It has been selling its common stock to many of its employees for a number of years. Since 1947 the actual sales, together with orders received in connection with the 1951 offering, which ceased on the institution of the present action, total almost two million dollars. It concedes that it has made use of the mails and facilities of interstate commerce in connection with these offerings (R. 4, 8).

¹ In its answer the Company stated "that it has a nation-wide distribution of its products and that to facilitate such distribution operates a large number of mills, cereal plants, soybean processing plants, sanitation and farm supply distribution centers, warehouses, sales offices and stores all over the United States; that it has a large number of various departments and that the operation of its business is, so far as possible, decentralized so that the various operating units throughout the country have the responsibility for the conduct of their individual operation and that defendant has in the past five years very substantially increased the number and size of its plants of various types and the dollar volume of its business" (R. 4). Its vice president testified (R. 57): "Ralston Purina operated 36 feed mills, 6 soybean processing plants, and 3 cereal mills. It also operates many warehouses and elevators, some of which are owned, but most of which are leased by the company. It operates 79 retail concerns and employs approximately 7,000 people."

Its major milling properties are at: "Amarillo, Tex., Battle Creek, Mich., Bloomington, Ill., Brawley, Calif., Buffalo, N. Y., Charlotte, N. C., Circleville, Ohio, Davenport, Iowa, Delmar, Del., Denver, Colo., Fort Worth, Tex., Iowa Falls, Iowa, Jackson, Miss., Kansas City, Mo., Lafayette, Ind., Los Angeles, Calif., Lubbock, Tex., Macon, Ga., Miami Fla., Minneapolis, Minn., Muskogee, Okla., Nashville, Tenn., Oakland, Calif., Oklahoma City, Okla., Omaha, Nebr., Pocatello, Idaho, Richmond, Ind., St. Johnsbury, Vt., St. Louis, Mo., Stockton, Calif., Tampa, Fla., Visalia, Calif., Wichita, Kans., Wilmington, Del." (R. 72).

The 1951 offering was authorized by the following resolution of Ralston Purina Company dated September 11, 1951 (R. 45):

Resolved, that Mr. Donald Danforth; Mr. Lewis B. Stuart or Mr. E. R. Siler be and each of them is hereby *authorized to sell* at \$80 a share, not to exceed 10,000 shares of the authorized but unissued common stock of Ralston Purina Company *to employees* of Ralston Purina Company or Ralston Purina Company of Canada, Ltd., *who shall*, without any solicitation by the Company, or its officers or employees, *inquire of any of them as to how to purchase common stock of Ralston Purina Company*; provided, however, that if such officer is able to purchase such stock for less on the open market he is authorized to purchase stock for such employee on the open market at such lesser price; provided further that this authorization shall terminate December 31, 1951. [Italics supplied.]

Similar resolutions had been used for the employee offerings of previous years (R. 64).

Pursuant to the resolution of September 11, 1951, the following memorandum was sent to the Company's branch and store managers (R. 59, 66):

ST. LOUIS, MISSOURI,
September 21, 1951.

If you would like to buy some Purina Common Stock at \$80 a share, which is about the current market, let me know by October 1 how many shares you want.

The Company has issued the following statement which should be thoroughly understood by anyone interested in acquiring stock at this time.

"The Company is unwilling to take the responsibility, in essence, of guaranteeing or forecasting that the price of Purina stock is going up or will remain at its present price for the next twelve months or so. Consequently the Company is making no recommendation that employees purchase at current prices.

"The Company, however, is willing to try to protect employees against a market rise in the price of the stock resulting from temporary competitive bidding by employees. To do this the Company will make available for a limited time some authorized but unissued stock at \$80.00 a share. *The only employees to whom this stock will be available will be those who take the initiative and are interested in buying stock at present market prices.*

"If stock can be purchased on the open market at a price lower than \$80 a share, the employee will, of course, buy at the lower price."

H. A. STEIN.

[Italics supplied.]

The actual number of employees to whom the Company's offerings have been made is not known since the Company kept no record of these offerees, but the offerees each year have admittedly exceeded the actual purchasers (R. 8-9). One hundred sixty-seven employees accepted the 1951 stock

offering before it was withdrawn pending resolution of the issue here involved (R. 39). These acceptances involved 3,769 shares at \$301,520 (R. 39). The offer was made to a substantially larger number. According to the Company's witness, its vice president, Mr. Stuart, the offering was to more than 500 but less than 1,000.² In 1947 the Company received \$331,740 by the sale of 6,984 shares to 243 employees at \$47.50 per share (R. 11). In 1948 it received \$56,000 by the sale of 1,120 shares to 20 employees at \$50 per share (R. 18). In 1949 it received \$550,000 by the sale of 10,000 shares to 414 employees at \$55 per share (R. 19). In 1950 it received \$676,130 by the sale of 9,659 shares to 411 employees at \$70 per share (R. 29). These sums total almost \$2,000,000.

Although the sole limitation expressed in the corporate resolution and the memorandum sent to store managers was that the offering was to be made only to employees who evidenced a desire to buy the stock, the Company has contended that the offer was open only to "key employees". This term was defined differently at different times.

In response to an inquiry by this Commission, Mr. Stuart had stated (R. 82):

Criterion employed to determine if a person is a key employee is position held, namely, an officer, department head, assistant to a de-

² Although Mr. Stuart had advised the Commission that the number of employees eligible to purchase stock was "approximately five hundred" (R. 82), when cross-examined in this connection he testified: "It was not certainly exactly 500, but it was not a thousand, but let us say, or any number substantially above that" (R. 62).

partment head or other employee the company considers eligible for promotion to a position of greater responsibility as an administrative, production, sales, or research department head or an assistant to a department head.

The "position held" by employees who have actually purchased stock from the Company during the past few years, however, has included:

Artist (R. 18).

Assistant in Animal Pathological Dept. (R. 13).

Assistant District Salesman (R. 20).

Assistant Grain Buyer (R. 21).

Assistant Purchasing Agent (R. 11).

Assistant Superintendent (R. 34).

Bakeshop Foreman (R. 22).

Buyer (R. 15).

Cashier (R. 12).

Chemist (R. 41).

Chow Loading Foreman (R. 34).

Clerical Assistant to Accounting Manager (R. 20).

Clerical Assistant in Cashier Department (R. 20).

Copywriter (R. 19).

Dairy Specialist (R. 42).

District Salesman (R. 16).

Dog Chow Specialist (R. 37).

Electrician—Maintenance Dept. (R. 20).

Elevator Foreman (R. 15).

Engineer (R. 34).

General Night Foreman (R. 34).

Intermediate Grain Merchandiser (R. 19).

Laboratory Assistant (R. 21).

Loading Foreman (R. 22).

Mail Section Supervisor (R. 20).
 Maintenance Shift Leader (R. 21).
 Manager of Eastport Warehouse (R. 32).
 Mill Office Clerk (R. 40).
 Mill Production Trainee (R. 32).
 Miller (R. 21).
 Millwright Foreman (R. 21).
 Night Foreman (R. 32).
 Office Production Assistant (R. 31).
 Order-Credit Trainee (R. 40).
 Power Engineer (R. 15).
 Production Trainee (R. 21).
 Ralston Miller (R. 34).
 Retail Salesman (R. 12).
 Secretary to Production Manager (R. 13).
 Shipping Clerk (R. 21).
 Stenographer to Staff Manager (R. 15).
 Stock Clerk (R. 23).
 Territory Salesman (R. 17).
 Tinsmith Foreman (R. 32).
 Traffic Clerk (R. 21).
 Veterinarian (R. 41).

Among the purchasers of stock from the Company were employees whose total annual compensation was as low as \$2,700 (in 1949), \$2,435 (in 1950), and \$3,107 (in 1951) (R. 46). The employees who purchased the Company's stock, many of whom were from rural areas (R. 58), were scattered across the United States.³

³ Purchasers resided in the following communities:

Atlanta, Georgia (R. 12).	Binghamton, New York (R. 25).
Austin, Texas (R. 28).	Bloomington, Illinois (R. 21).
Baltimore, Maryland (R. 17).	Boston, Massachusetts (R. 12).
Battle Creek, Michigan (R. 15).	

After the classification and salary ranges of the employees who had purchased stock from the Company had become a matter of record in these proceedings, Mr. Stuart expanded his definition of a "key employee" (R. 58):

A key employee of course can be an officer or a department head or an assistant to a department head but is not confined to an organization chart. It would include an individual who is eligible for promotion, an individual who especially influences others or who advises others, a person whom the employees look to in some special way, an individual, of

Buffalo, New York (R. 11).	Minneapolis, Minnesota (R. 14).
Charlotte, North Carolina (R. 14).	Nashua, New Hampshire (R. 41).
Chicago, Illinois (R. 12).	Nashville, Tennessee (R. 14).
Chattanooga, Tennessee (R. 36).	New York, New York (R. 12).
Circleville, Ohio (R. 14).	Newark, Delaware (R. 42).
Cleveland, Ohio (R. 12).	Oakland, California (R. 15).
Columbus, Ohio (R. 17).	Omaha, Nebraska (R. 14).
Davenport, Iowa (R. 15).	Pocatello, Idaho (R. 15).
Delmar, Delaware (R. 39).	Philadelphia, Pennsylvania (R. 12).
Denver, Colorado (R. 15).	St. Johnsbury, Vermont (R. 23).
Des Moines, Iowa (R. 16).	St. Louis, Missouri (R. 11).
Detroit, Michigan (R. 20).	San Francisco, California (R. 12).
Dundee, Michigan (R. 22).	Seattle, Washington (R. 12).
Fort Worth, Texas (R. 12).	Stockton, California (R. 23).
Garland, Texas (R. 37).	Syracuse, New York (R. 12).
Gray Summit, Missouri (R. 13).	Tampa, Florida (R. 23).
Iowa Falls, Iowa (R. 14).	Toronto, Ontario (R. 25).
Jackson, Mississippi (R. 39).	Visalia, California (R. 15).
Jacksonville, Florida (R. 16).	Wichita, Kansas (R. 23).
LaFayette, Indiana (R. 22).	Wilmington, Delaware (R. 15).
Los Angeles, California (R. 15).	
Lubbock, Texas (R. 14).	
Memphis, Tennessee (R. 12).	
Miami, Florida (R. 22).	

course, who carries some special responsibility, who is sympathetic to management and who is ambitious and who the management feels is likely to be promoted to a greater responsibility.

Subsequently, Mr. Stuart appeared to equate "key employees" to "sales people"⁴ and to "production people" (R. 60). He claimed, however, that they did not include "little people in our organization" (R. 60).

In an attempt to clarify his testimony, Mr. Stuart stated on cross-examination (R. 61):

Well, sir, I think that is a matter of influence. I think all of us who have handled people know that there are key people in the various echelons if you have been in military service there were a captain, who perhaps would have felt that one of the lieutenants was a key lieutenant, but you know if you did not have the support of your key sergeant, or the key corporal, or maybe the key private who exercised influence, that you better not go into anything that is very serious; and the same is true in business. Key people are simply not regimented into charts. We don't regiment people in that manner.

Mr. Stuart's own testimony confirmed what the resolution and offering letter show on their face, that the term "key employee" appears to have in-

⁴ Of the total number of purchasers and would-be purchasers, approximately one-third were salesmen (R. 11-44).

cluded any employee who might have "indicated an interest" in the purchase of the stock (R. 59).⁵

Some information concerning the financial affairs of the Company had been sent to those of the offerees who were already stockholders (R. 67-72), but a substantial portion of the offerees were not stockholders (R. 11-44). Mr. Stuart testified that figures available to him as an officer "were not available to all of the so-called key employees".⁶ The Company's production records were apparently available to many of its employees to whom its stock was offered (R. 60, 63), but it is not contended that the numerous items of information which would have been required in a prospectus

⁵ Mr. Stuart testified that when stock was available to employees, the procedure was as follows: "The president, speaking for the board of directors, notified the officers, who in turn notified the managers working directly under them, that the company had or was about to make some stock available. They [the managers] very carefully were told not to solicit in any way orders for stock, but simply to acquaint the people who had indicated an interest or whom they felt it was fair to notify of the situation" (R. 58-59).

Although Mr. Stuart stated that there were many employees who had been turned down when asking to purchase stock (R. 61), he cited no substantiating details, and it appears from the Company's brief in the court below (p. 15) that he was referring not to the offerings by the Company, which were apparently made only in September or October of each year, but to purchases for employees on the open market, an accommodation which Mr. Stuart sometimes performed.

⁶ This testimony appears at R. 66:

Mr. Stuart stated that depending on the individual all figures are available to some, and to a lesser degree to others. He also stated that he was vice president of the company and that figures were available to him showing the profits of Ralston Purina for a given month. He stated that these figures were available to many others but that they were not available to all of the so-called key employees.

if the stock had been registered were generally available to them. These would include any change in the trend of profits in the period subsequent to the last published financial statements. Although Mr. Stuart emphasized that "tonnage, this is volume production, is perhaps the biggest single figure in the company's success," it does not necessarily follow that the ratio between production and profits is constant. For example, according to the Wall Street Journal of December 15, 1951 (R. 63, 82):

Despite a 35% jump in sales, net income of Ralston Purina Co. for the fiscal year ended September 30 fell to \$8,784,341, from the \$12,560,665 reported for the preceding year * * *.⁷

It was in September 1951, before these figures were generally available, that the offering which was stopped by the present litigation was being made to employees (R. 63, 66).

The Company states that the purpose of its sales to "key employees" was to enable employees who received a bonus to acquire common stock of the Company without bidding up the price of the stock, which was dealt in only on the over-the-counter market and in limited quantities (R. 5-6). The Company, however, has at no time made the claim that its stock was offered *only* to employees who re-

⁷ The 1951 earnings were charged approximately \$500,000 to reflect excess profit taxes for the 1950 fiscal year of which the company was not aware "when we closed our books at the end of 1950" (R. 83, 63). If the published figures were adjusted retroactively to make this charge in 1950, they would show \$9,284,794 for 1951 and \$12,060,212 for 1950. Compare the company's report dated December 14, 1951 which confirms the 35 per cent increase in sales, while disclosing a 20 per cent drop in net profit after taxes (R. 67).

ceived a bonus. Nor has there been any constant relationship between the size of the bonuses and the amount of stock purchased by employees.⁸

Prior to the Company's 1950 offering, the Commission's Division of Corporation Finance advised it that in the Division's opinion the Company's apparent reliance on the Section 4(1) exemption in a previous offering "was not well founded" and suggested the advisability of communicating with the Commission "prior to making any future offering of securities" (R. 77). Without advising the Commission, however, in September 1950, the Company made the offering to its employees which resulted in the purchase of 9,659 shares by 411 employees that month (R. 29). After this fact became known to the Commission, in August 1951 it initiated the exchange of correspondence which led to the present action for an injunction (R. 76-77, 78-82).

Upon the institution of this action, the Company consented to a preliminary injunction. After hearing, the district court denied a permanent injunction decree on the ground that the sales were within the exemption from registration provided in Section 4(1) of the Act for "transactions by an issuer not involving any public offering." The court below affirmed, stating that it would not reverse the judgment of the trial court (R. 99) unless

⁸ In this connection, for example, in 1947, when a bonus of \$782,000 was distributed to 256 employees, 243 employees purchased \$331,740 of stock from the Company, while in 1948, when a bonus of \$734,000 was given to 252 employees, only 20 employees purchased stock from the Company and in the amount of only \$56,000 (R. 11, 18, 59).

it could "demonstrate, at least to its own satisfaction, that the judgment is wrong," and that it was unable to do so in this case. By stipulation the Company agreed not to make further offerings to employees pending disposition of the matter in the appellate courts (R. 55-56, 100-101).

SPECIFICATION OF ERRORS TO BE URGED

The Court of Appeals erred:

1. In finding that the Respondent's offering to its employees was not a public offering under Section 4(1) of the Securities Act; and
2. In upholding the District Court's order dismissing the complaint.

SUMMARY OF ARGUMENT

The interpretation of the private offering exemption by the court below conflicts with the purpose of the Securities Act to provide full and fair disclosure concerning security offerings. Both the text of the exemption and its context show that Congress did not intend to withhold the protection of registration from any substantial number of the public, but only in the case of isolated transactions with an individual or a small group. The "public" intended to be protected includes large groups of employees—clerks, salesmen, foremen, trainees, etc.—who participated in the offerings in question. Where an offer is not confined to those whose special circumstances make the protection of registration unnecessary it does affect the "public" and cannot qualify for exemption under the test "not involving any public offering."

In the instant case, the company failed to prove that its offering was not made to substantially all of its 7,000 employees; but even if the record supported the contention that the offering was limited to about 500 employees, as contended, the number of offerees would still preclude application of the exemption here involved, particularly since the criteria allegedly used to select the group were unrelated to the purpose of the Act. These include the motive of the issuer to create employee goodwill and the absence of high pressure sales techniques. Only confusion can result from determining the application of the exemption upon the basis of irrelevant criteria of this nature.

The decision below is inconsistent with the previously decided cases and the legislative history, which indicate that the exemption here involved is "to permit an issuer to make a specific or isolated sale of its securities." The legislative background of the Act, as passed in 1933, is not altered by certain contradictory explanations for the rejection in 1934 of an amendment which would have exempted offerings to employees.

The exemptions, which are specifically applicable to exchanges with existing security holders, would be surplusage and the limitations thereon nugatory, if, as indicated by the court below, the private offering exemption applies to offerings to a substantial group of offerees wherever there is a "logical basis" for giving special consideration to the particular group.

Respondents' arguments to the effect that the stock offering issue is relatively small and the burden of registration relatively heavy do not establish the availability of the non-public offering exemption. Congress has dealt specifically with the problem of small issues, and has made the availability of an exemption on that basis depend upon conditions not applicable in this case.

Weight should be given to the consistent construction of the exemption by the Commission, a construction well established and judicially accepted prior to a 1945 amendment which liberalized the small issue exemption, but did not undertake to change the non-public-offering exemption.

ARGUMENT

Although the term "public offering" is not defined, both the pattern of the Act and its legislative history make clear that the unregistered offering which the Commission seeks to enjoin is not exempt. This result is in accord with the decided cases, except for the decisions below, and conforms to the consistent administrative interpretation.

This Court has pointed out that the Securities Act must be construed "in conformity with its dominating general purpose . . . so as to carry out in particular cases the generally expressed legislative policy."⁹ The "essential purpose of the statute is to protect investors by requiring publication of certain information concerning securities before

⁹ *Securities and Exchange Commission v. C. M. Joiner Leasing Corp.*, 320 U.S. 344, 350-351.

offered for sale.”¹⁰ The title of the Act itself describes it as “An Act to provide full and fair disclosure of the character of securities sold in interstate and foreign commerce and through the mails”

Section 5, requiring registration and the use of a statutory prospectus, is the heart of the Act; and the exemption provisions of Section 3 and 4 serve primarily to determine whether or not Section 5 is applicable.¹¹ Subsidiary provisions deal with the mechanics of registration (Section 6), information required in a registration statement (Section 7), the procedure for the taking effect of registration statements and amendments (Section 8), the information required in a prospectus (Section 10), and civil liabilities on account of a false registration statement or a sale in violation of Section 5 (Sections 11 and 12(1)). In addition there are general procedural and enforcement provisions, criminal sanctions and provisions for judicial review.

This case turns on Section 4(1), which exempts from Section 5 “transactions by an issuer not involving any public offering.” In holding the instant \$800,000 offering to come within this exemption, the court below stated (R. 93):

The Company had the burden of proving that its offering of stock to its key employees

¹⁰ *A. C. Frost v. Coeur d'Alene Mines Corp.*, 312 U.S. 38, 40.

¹¹ The Act also contains broad anti-fraud provisions applicable to any sale of a security which involves the use of interstate instrumentalities or the mails, including sales exempt from Section 5. See Section 17 and 12(2).

came within the exemption provided by Section 4(1) of the Act, which, being an exception to the general policy of the Act, is to be strictly construed and may not receive such a broad construction as would be destructive of the plain purpose which caused the Act to be adopted.

The Court also appeared to recognize that an offer is made to all to whom the stock is "made available" (R. 92).

It rejected, however, any thought that the exemption was intended to apply only "to specific or isolated sales or offerings of securities by an issuer to a particular person or to a numerically small group" (R. 95-96), and disagreed with the contention that the offerings in the instant case "were made to too many employees and involved too many shares of stock to be nonpublic offerings" (R. 97). It concluded (R. 98):

* * * we do not think that the intra-organizational offerings of stock by the Company, unaccompanied by any solicitation, which have resulted in a limited distribution of stock, for investment purposes, to a select group of employees considered by the management to be worthy of retention and probable future promotion, is to be excluded from the exemption of nonpublic offerings granted by Congress. There is, we think, virtually no possibility that these offerings, if continued, will frustrate or impair the purpose of the Act.

The construction of the exemption by the court below does materially impair the purpose of the Act by sanctioning the withholding of the prescribed disclosures from a substantial number of offerees who have not been shown to be without need for its protections and in an area where the Act did not contemplate that the burden of registration might be disproportionate to the contemplated benefits. Instead of actually construing the exemption strictly, the opinion below subtly shifts to the Commission the burden of showing that exemption should be denied.

- a. *The text of Section 4(1) supports a construction that an offering to a substantial number of the public is not exempt.*

The text, "not involving any public offering," while not employing words of art, derives "much meaningful content from the purpose of the Act, its factual background and the statutory context."

Cf. American Power and Light Co. v. Securities and Exchange Commission, 329 U. S. 90, 104.¹² On

¹² For a discussion of prior English interpretation of § 81 of the English Companies Act applicable to "any prospectus, notice, circular, advertisement, or other invitation, offering to the public," see Douglas & Bates, *Some Effects of the Securities Act upon Investment Banking*, 1 Univ. of Chicago L. Rev. 283, at p. 299.

See *Nash v. Lynde*, [1929] A. C. 158, discussed in 167 L. T. 239 (1929), where Viscount Sumner said:

The public . . . is of course a general word. No particular numbers are prescribed. Anything from two to infinity may serve; perhaps even one, if he is intended

its face the exemption is inapplicable if there is involved "any public offering". This does not mean that all members of the public must be included. As the opinion below concedes, Congress could not have "intended that an offering not open to everyone was exempt" (R. 94). On the other hand one of the situations where the exemption does apply is an offering to a few institutional investors who make their own investigation and who are in a position to negotiate the details of the transaction with the issuer.

The Commission has construed the exemption with major emphasis on whether the offering is calculated to reach a substantial number of "the public" sought to be protected.¹³ The Commission has rarely acquiesced in a claim for exemption where as many as a hundred offerees have been in-

to be the first of a series of subscribers but makes further proceedings needless by himself subscribing the whole.

and Lord Buckmaster added:

A distribution of a prospectus among a well-defined class of the public would be an issue within the meaning of Section 81.

¹³ The President's message initiating the federal securities legislation expressed concern for "the public" which had "sustained severe losses" and stated:

The purpose of the legislation I suggest is to protect the public with the least possible interference to honest business.

This is but one step in our broad purpose of protecting investors and depositors. [77 Cong. Rec. (1933) 937].

Similarly, the Senate Report speaks of the bill as one "to protect the investing public" and based on the policy "of informing the investor." S. Rep. No. 47, 73d Cong., 1st Sess. (1933) 1. It seems clear from the foregoing statements that the "public" sought to be protected included any investors who might be expected to need the protection of the Act.

volved and then only in circumstances where for special reasons the protections of the act appear not to be necessary.¹⁴ Such might be the case where an offering is made to the top management of the issuer who can be expected to be familiar with the type of information that would be available by a statutory prospectus. But, whatever the special circumstances, the Commission has consistently interpreted the exemption as being inapplicable when a large number of offerees is involved.

Such an interpretation is necessary if the exemption is to be construed so as not to impair the disclosure purposes of the Act. This approach conforms to what was stated to be the purpose of the exemption provisions of the Act taken as a whole. The Committee on Interstate and Foreign Commerce said in discussing the scope of the bill as reported to the House:

It carefully exempts from its application certain types of securities and securities transactions where there is no practical need for its application or where the public benefits are too remote.¹⁵

Since the offerings here in question went to hundreds of employees throughout the country,

¹⁴ A 1934 published opinion of the Commission's then General Counsel, set forth in the opinion below (R. 96, n. 2), indicated that an offering designed to reach less than 25 ultimate purchasers would normally be regarded as within the exemption.

¹⁵ H. Rep. No. 85, 73d Cong., 1st Sess. (1933) 5.

with most of those accepting purchasing in lots of less than a hundred shares, and many in amounts from one to ten shares,¹⁶ it can hardly be contended that the offering did not extend to a substantial number of the public. Even if reference were made only to those employees who actually purchased or subscribed for petitioner's stock, the size of the group, in excess of 400 in each of two recent years, was so great that the exemption was not available.

The record makes clear, however, that the offering was to a much larger group. As noted by this Court, "the Securities Act prohibits the offer as well as the sale of unregistered, non-exempt securities."¹⁷ Since the company had the burden of establishing the availability of the exemption, as the Court below concedes, it had the burden of showing that the offer rather than the sale was confined within the scope of the exemption. It failed, however, to keep any record of the number of its employees who were specifically invited to subscribe. With respect to the offerings in 1947, 1948, 1949, and 1950, there is absolutely nothing in the record to indicate the number of employee offerees except the company's concession that they exceeded the number of purchasers (R. 8-9). With respect to the 1951 offering the company conceded that it was made to "between 400 and 500 employees" (R. 8, 82), but on cross-examination the company's vice

¹⁶ See R. 11-45 listing the names and amounts of the several subscriptions.

¹⁷ *Securities and Exchange Commission v. W. J. Howey Co.*, 328 U. S. 293, 301.

president was unable to give any rational explanation as to how these figures were arrived at (R. 61-62) and the Court below stated that it seemed "probable that the estimate of the Company was low" (R. 92). As we have seen, no limitation was set forth in the director's resolution authorizing the offering, and all branches and stores were concededly advised of the availability of the offering to employees by a letter indicating that the only limitation was that the employee "take the initiative" and be "interested in buying stock at present market prices." (See pp. 4-5, *supra*.) Accordingly, it would appear that the offering actually extended in the statutory sense to all of the 7,000 employees. To the extent that the courts below appear to have found a less extensive offering their findings appear to us to reflect an unduly restricted concept as to what constitutes an "offering".

Securities and Exchange Commission v. Sunbeam Gold Mines Company, 95 F. 2d 699 (C.A. 9) held an offering for cash to existing security holders, some 530 in number to be public and not exempt from registration. The security holders in question were the stockholders in one or another of two corporations which were to be merged; but the opinion indicates that the result would have been the same if only a single corporation had been involved. The court concluded at p. 702:

We therefore hold that an offering of securities under the Securities Act of 1933 may be a public offering though confined to stock-

holders of an offering company, *a fortiori* where the offerees include the stockholders of another company, though seeking to become stockholders of the offeror.

This case is in point here. The number of offerees involved was at least as small as the offerees here and the limitation to persons who were stockholders of the corporations involved in the merger likewise involved logical motives on the part of the issuer in selecting the particular group. Neither employees as a class nor stockholders as a class are likely to be fully informed as to the issuer's affairs, although many members of either class would have more information than other members of the public.

The *Sunbeam* decision has been cited with approval in the following cases: *Merger Mines Corporation v. Grismer*, 137 F. 2d 335, 341 (C.A. 9, 1943), where an offering to 1,100 stockholders was found to be a public offering; *Kaufman v. United States*, 163 F. 2d 404, 410 (C. A. 6, 1947), where the trial court's charge to the jury on "public offering" was sustained on the basis of the *Sunbeam* decision; *Corporation Trust Co. v. Logan*, 52 F. Supp. 999, 1002 (D. Del. 1943), where the court cited with approval the language from the *Sunbeam* case that "an offering to stockholders, other than a very small number [is] a public offering ***"; *Campbell v. Degenther*, 97 F. Supp. 975, 977 (W.D. Pa. 1951), where the court cited the *Sunbeam* case for the proposition that "an offering of securities under the Securities Act of 1933 may be a public offering even though confined to stockholders of an offer-

ing company." *Securities and Exchange Commission v. Searchlight Consolidated Mining & Milling Co.* (D. Nev., No. 1000, March 17, 1953), where the Commission's motion for summary judgment was granted on the basis of the *Sunbeam* case in an action to enjoin Section 5 violations, despite a contention (which the Commission disputed but which the Court apparently found unnecessary to resolve) that the solicitation was confined to the defendant corporation's stockholders, approximately 400 in number.¹⁸ A similar approach is reflected in decisions under State blue sky laws. See e.g., *People v. Montague*, 280 Mich. 610; 274 NW. 347, 350.

b. *The legislative history supports the Commission's construction.*

In reaching the conclusion that the offering involved in the *Sunbeam* case was exempt, the Ninth

¹⁸ Cf., however, *Securities and Exchange Commission v. Federal Compress & Warehouse Co.*, CCH Fed. Sec. Law Serv. 1941-1944 Dec., p. 90,117 (W.D. Tenn. 1936), a case relied upon below by the respondent. That case was decided prior to the *Sunbeam Gold Mines* case. There a preliminary injunction which would have stopped the sale of unregistered stock to the defendant's existing stockholders was denied. But in that case the court was concerned with the possibility that "the defendant corporation and its stockholders could and probably would be irreparably injured without any opportunity for redress" by issuance of the temporary injunction prior to the hearing on the merits (p. 90,122). The court also found that the stock there involved was "rather closely held in Memphis and environs," and that all of the stockholders had "full opportunity to become familiar with the affairs and conditions of the company through their contacts with . . . [its] officers and directors, statements sent to them from time to time and otherwise" (p. 90,118). Prior to any hearing on the merits and subsequent to an unsuccessful attempt on the part of the Commission for a temporary injunction *pendente lite* from a judge of the Court of Appeals for the Sixth Circuit, the action was dismissed on the ground that it had become moot.

Circuit relied in part upon the principle that the exemption, as an exception to the general policy of the legislation, must be narrowly confined, and relied in part upon the legislative history. This legislative history included a statement of the House Committee on Interstate and Foreign Commerce with respect to an earlier form of this exemption not differing materially from the present language,¹⁹ that the purpose of the exemption is

* * * to permit an issuer to make a specific or an isolated sale of its securities to a particular person, * * * [H. Rep. No. 85, 73d Cong., 1st Sess. (1933) p. 15-16].

The bill as it passed the House had exempted the sale of stock to existing stockholders. The Senate's elimination of this exemption was approved in conference and the following explanation given by the managers on the part of the House: "Sales of stock to stockholders become subject to the act unless the stockholders are so small in number that the sale to them does not constitute a public offering." See H. Rep. No. 152, 73d Cong., 1st Sess., (1933) p. 25. Rejection of the exemption provided in the House bill shows that there was no intention to exempt sales to groups having some special relationship to the issuer unless they should be "small in number".

The Securities Act was amended in 1934. One proposed exemption, which was rejected, would

¹⁹ The House draft, to which this statement referred, exempted "transactions by an issuer not with or through an underwriter and not involving any public offering." H.R. 5480 (May 4, 1933 draft) 73d Cong., 1st Sess., Sec. 4(1).

have exempted participants in employees' stock investment plans. The reasons of the House conferees for rejecting this amendment are clear and unambiguous, as stated in their report of the conference:

The conferees eliminated the third proposed amendment to this subsection on the ground that the participants in employees' stock-investment plans may be in as great need of the protection afforded by availability of information concerning the issuer for which they work as are most other members of the public. [H. Rep. No. 1838, 73d Cong., 2d Sess., p. 41.]

The debate in the Senate, however, leaves some uncertainty as to the reasons of the Senate for not pressing the amendment. Senator Hastings, who had offered the rejected amendment, complained of its abandonment by the Senate conferees, stating: "I do not see why the Federal Government should insist upon having anything to do with a plan of a corporation which decides that, as a part of its policy, it will give certain additional compensation or bonus to its employees." Senator Cuzens, one of the conferees, stated that "one of the controlling factors which caused the elimination of the amendment was the Insull transactions," and that "the House conferees were very insistent upon pointing out the evils which have occurred where employees of a number of corporations have been induced to buy shares of the stock of the corporations." (78 Cong. Rec. (1934) 10181) Senator

Fletcher, another conferee, suggested that the proposed amendment had been rejected as unnecessary because in the judgment of the conference no public offering would be involved, "and certainly there is no question in the world that the Commission has the authority to declare that such an offering would not be a public one." (78 Cong. Rec. 10182.)

The opinions below refer to Senator Fletcher's remarks, not to those of Senator Couzens, and conclude, erroneously we believe, that the legislative history offers no positive support for the Commission's construction (R. 50, 95). The Committee Report is entitled to more weight than the remarks of individual conferees in debate on the Senate floor, particularly when the Senators disagree. The fact of the rejection of the amendment exempting all employees' stock investment plans also warrants an inference that Congress did not mean to incorporate such an exemption in the Act, although we do not lean too heavily on the rejection of the amendment as positive support for the Commission's position. Certainly the court below could not properly draw the contrary conclusion from the proposed amendment's history. This episode is not part of the legislative history of the Securities Act as enacted, and is not in itself, of course, ground for supplying by judicial construction an amendment which the Congress itself rejected.

c. *The specific exemption of exchanges with existing security holders indicates an intent not to include in the private offering exemption offerings to groups identified by special relationship to the issuer.*

In rejecting the contention that an offering to a substantial number of offerees is necessarily "public," the courts below placed great reliance upon the issuer's designation of the offerees in question as "key employees." This was regarded not as a means of confining the offering to those top executives who would have no real need for the information which a registration statement would supply, but as showing that in its selection the respondent was prompted by legitimate business motives and not merely by a desire to avoid registration. These motives were described by the district court as related to forging ties of loyalty between itself and its employees (R. 52), and lacking "the slightest suggestion of a device to evade the law" (R. 54). The Court of Appeals in turn characterized the selection as not "random or by lot or without any logical basis" (R. 99). In addition, it was noted that a substantial percentage of the offerees were already stockholders of the company and that as stockholders or as employees they might be assumed to have some knowledge of its affairs (R. 92). There was no finding, however, that all of the offerees, or even a substantial percentage of them, had access to information at all comparable to that

which would be afforded by registration.²⁰ Surely, the clerical employees, salesmen, foremen, trainees, etc., who purchased the Company's securities could not be expected to have had familiarity with the type of information required to be supplied by a statutory prospectus.

Apart from difficulties in stretching the language of the exemption in question to cover so broad an offering, this aspect of the decisions below appears inconsistent with the explicit consideration which the Act shows was given by Congress to offerings to existing stockholders. Sections 3(a)(9) and (10) provide exemptions for certain offerings to existing stockholders which might be wholly unnecessary if the court below should be upheld in its interpretation of the non-public offering exemption.²¹ There is frequently a "logical basis for the

²⁰ It has not been contended that the company's annual reports, as filed with the Commission or as distributed to stockholders, contained disclosures comparable to those which would have been required if the issue were registered. The sales and production records available to officers in their capacity as employees were shown by the record to be a deceptive measure of profits. At the time the injunction action was brought the company's sales figures showed a substantial increase for the fiscal year which was ending; while the net profits for the year actually fell off sharply as a result of an increased tax item (p. 12, *supra*).

²¹ Section 3(a)(9) exempts:

Any security exchanged by the issuer with its existing security holders exclusively where no commission or other remuneration is paid or given directly or indirectly for soliciting such exchange;

Section 3(a)(10) exempts:

Any security which is issued in exchange for one or more bona fide outstanding securities, claims or property interests, or partly in such exchange and partly for cash, where the terms and conditions of such issuance and ex-

selection" in confining an offering to existing security holders, particularly where preemptive rights are applicable or in the case of a reorganization, as well as a basis for assuming some prior knowledge of the issuer's affairs on the part of the offerees. In the case of such an offering it may frequently be urged, at least as validly as in the instant case, that the issuer's motive is primarily to accord the offerees an investment opportunity rather than to drive the sharpest possible bargain with them. Nevertheless these exemptions specifically applicable to offerings to existing stockholders are applicable only in the case of exchange transactions. In the non-reorganization situations covered by Section 3(a)(9) the exemption is applicable only where the new security is exchanged "exclusively"—i.e., no cash payment is involved²²—and only where "no commission or other remuneration is paid or given directly or indirectly for soliciting such exchange." The reorganization exemption provided by Section 3(a)(10) applies only where the exchange is pursuant to a plan, the fairness of which has been approved by a court or agency authorized by law to grant such approval.

change are approved, after a hearing upon the fairness of such terms and conditions at which all persons to whom it is proposed to issue securities in such exchange shall have the right to appear, by any court, or by any official or agency of the United States, or by any State or Territorial banking or insurance commission or other governmental authority expressly authorized by law to grant such approval.

²² See Loss, *Securities Regulation* (1951) 363.

As we note *supra* (p. 26), the bill as it passed the House had contained a broader exemption which covered "the issuance of additional capital stock of a corporation sold or distributed by it among its own stockholders exclusively, where no commission or other remuneration is paid or given directly or indirectly in connection with the sale or distribution of such increased capital stock."²³ The conferees in substituting the present Section 3 (a) (9), limited to exchange transactions, stated: "Sales of stock to stockholders become subject to the act unless the stockholders are so small in number that the sale to them does not constitute a public offering." H. Rep. No. 152, 73d Cong., 1st Sess., at p. 25. To the extent that the exemption afforded in Section 3(a) (9) depends on the absence of sales commissions paid directly or indirectly, there is some analogy to what the court below characterized here as "unaccompanied by any solicitation" (R. 98). But it is inconsistent both with the text of Section 3(a) (9) and the changes in conference to conclude that Congress intended the absence of selling commissions to be a basis for exemption, except in the limited area to which Section 3(a) (9) extends.

d. *Congress made specific provision for an exemption of small offerings upon conditions not applicable here.*

In the court below respondent emphasized the alleged burdens of compliance with the registra-

²³ See H.R. 5480, Rep. No. 85, 73d Cong., 1st Sess., print of May 10, 1933 (showing Senate amendments), Sec. 4(3), at p. 9.

tion requirements of the Act, and indicated that these burdens were disproportionate to the potential benefit to those affected by the instant offering. The opinion below quotes the testimony of an officer of the respondent as to the alleged hardship (R. 92-93) but states:

In determining whether the Act requires that securities be registered, the honesty of the issuer, the soundness of the securities offered, or the delay and expense which may be involved in securing their registration, are not of material consequence.²⁴

The Act indicates on its face that the Congress did give consideration to the relative burden of registration of small issues. Insofar as that consideration was made a basis for exemption, it originally set a limit of \$100,000 and within that limit left the matter to the discretion of the Commission in the exercise of its rule-making authority. Section 3(b), as originally enacted, gave the Commission discretionary authority to exempt by rule, "subject to such terms and conditions as may be prescribed therein . . . if it finds that the enforcement of this title with respect to such securities is not necessary in the public interest and for the protection of investors by reason of the

²⁴ Respondent's witness testified that the Company had already had occasion to prepare one registration statement in connection with an offering of preferred stock (R. 64-65). For that reason and because of the recurrent offerings of the common, compliance with the registration requirements of the Act would appear to be less burdensome for the respondent in proportion to the amount of money involved than would be the case where less frequent offerings might be involved.

small amount involved or the limited character of the public offering." The original \$100,000 limit was in 1945 enlarged to the present \$300,000. That exemption is inapplicable to the instant issue both because respondent's offering amounts to \$800,000 and because respondent did not purport to comply with the conditions to exemption prescribed in the Commission's rules.²⁵

It appears to have been the original expectation that the Commission would be sparing in the exercise of its discretionary authority to exempt under Section 3(b). Thus the Committee on Interstate and Foreign Commerce stated:

To confer such a power upon the Commission permits the Commission by adequate rules and regulations to provide against needless registration of issues of such an insignificant character as not to call for regulation. This general power of the Commission, however, is closely limited by the requirement that it shall not extend to any issue whose aggregate amount exceeds \$100,000. The Commission is thus safeguarded against any untoward pres-

²⁵ The Commission's rules pursuant to this section require filing of certain limited information with the Commission, including copies of any sales literature to be used, thereby serving to aid in the enforcement of the anti-fraud provisions of Section 17 applicable to such exempt issues. In addition, the Commission has prescribed certain minimum prospectus requirements applicable to certain types of issues. See Loss, *Securities Regulation* (1951) 379-390, for a description of the Commission's administration of this exemption. The Commission has recently made similar requirements as to a minimum prospectus more widely applicable. Securities Act Releases 3466, 3467; 18 Fed. Reg. 1437 (March 13, 1953).

sure to exempt issues whose distribution may carry all the unfortunate consequences that the act is designed to prevent." [H. Rep. No. 85, 73rd Cong., 1st Sess., (1933) p. 15.]

When Congress subsequently concluded to raise the limits of the Commission's discretion to a less "insignificant" amount, this change was made in recognition of the discretionary power of the Commission to deny or condition the exemption, and in the light of prior Commission rules providing a modicum of scrutiny with respect to the exempt issues.

e. In relying upon motive and lack of sales pressure the court below applied irrelevant criteria.

The holding below emphasizes factors so irrelevant to the purposes of the Act as to make difficult any prediction as to its future application. The court below appeared to deem relevant the motive of the Company, which it found was to build up employer-employee relations rather than to raise capital. Nowhere in the terms of the Act nor in its legislative history, however, is there any indication that Congress intended the motives of the seller of securities to govern whether or not registration is necessary. To recognize the issuer's motives as a basis for exemption would be to widen the exemption so that it might be applicable to offerings not only to employees but perhaps also to stockholders, to customers, or even to groups

on the basis of ties of nationality.²⁶ As we have seen, the issuer's motives in dealing with any such group may be partly to afford a special opportunity to the group.²⁷

Even if the Company's motive was not primarily to raise money, substantial sums were in fact raised by its sales to employees, sums so large that the Company would have been unable in several of the past years to have taken advantage of the Regulation A exemption for small offerings be-

²⁶ Cf. *Securities and Exchange Commission v. Chinese Consol. Benev. Assn.*, 120 F. 2d 738 (C.A. 2), where the group selling securities of the Chinese government apparently acted only from patriotic motives. Cf. also Section 6(e) (1) of the Public Utility Holding Company Act of 1935 [49 Stat. 803, 15 U.S.C. 794(c) (1)], which prohibits the sale by any registered holding company or subsidiary thereof of securities of such holding company from "house to house," putting an end to the formerly prevalent "customer-ownership campaigns." It has been stated that the objective of these campaigns was not so much to raise capital as to stifle criticism that might be made by customers if they did not have a stake in the enterprise. Barnes, *Economics of Public Utility Regulation* (1942) 112; *Utility Corporations*, No. 72a (1935) 348-349, S. Doc. 92, 70th Cong. 1st Sess.

²⁷ In opposing the grant of a writ, respondent emphasized the relationship between its offering of stock to employees and its program of cash bonuses (Br. p. 3). The opinion of the district court states that recipients of bonuses have generally made investments in stock (R. 46). The Court of Appeals suggests that there was a substantial overlap between recipients of bonuses and the offerees (R. 91). As urged at pages 22-23, *supra*, under a proper interpretation of the term "offering" there was no factual basis for this conclusion. In any event, there is no more indication that the Congress intended to exclude recipients of bonuses from the protection of the Act than to exclude those employees whose compensation may be more regularly defined. Thus the relationship of the offering to the company's bonus program tends only to give color to the finding that the company's motive was not primarily to raise capital which, as indicated in the text, is a wholly irrelevant consideration.

cause its offering substantially exceeded the \$300,000 statutory limitation. (See *supra*, pp. 33-35.)

The court below also appeared to rely on an absence of solicitation (R. 96). By this, the court apparently meant that employees were not *urged* to buy, since the record makes it clear that they were notified of the opportunity to buy (see pp. 4-5, *supra*). If the absence of high pressure sales techniques, however, should be considered significant in determining the extent of the non-public-offering exemption, a dangerous precedent would be created, since one of the oldest devices in marketing securities has been to make them seem hard to buy, to let the purchasers in on an "inside deal," or to make it seem that they, rather than the seller, are taking the initiative. Section 2(3) of the Act recognizes this situation by making a "solicitation of an offer to buy" the equivalent of an offer to sell.

The court below recognized that "the honesty of the issuer, the soundness of the securities offered, or the delay and expense which might be involved in securing . . . registration, are not of material consequence" (R. 93). By taking into consideration, however, such matters as the motives of the issuer and the lack of high-pressure selling, which we have seen have no necessary relationship to the statutory purpose, the court below fell into the error of making policy determinations in an area which, we submit, Congress did not leave open to the courts. We have seen that Congress carefully and in detail set forth the available exemptions and where it chose to delegate policy deter-

minations, they were delegated to this Commission within the carefully circumscribed limits of Section 3 (b) of the Act.

In *Securities and Exchange Commission v. W. J. Howey Co.*, 328 U.S. 293, this Court refused to permit a similar consideration unrelated to the statutory purpose to be determinative of the scope of the registration requirements of the Act, pointing out (p. 301): "The statutory policy of affording broad protection to investors is not to be thwarted by unrealistic and irrelevant formulae."

f. *The Commission's administrative construction rejected by the courts below is entitled to special weight.*

In the opinion of its General Counsel interpreting this exemption, which was released by the Commission at the outset of its administration of the Securities Act and has been forwarded ever since to persons inquiring as to the scope of the non-public-offering exemption, it was stated that the exemption was meant to apply only to offerings to "an insubstantial number of persons."²⁸ That opinion was given in the context of an offering to 25 persons and declined to express a definite con-

²⁸ Securities Act Release No. 285 (Jan. 24, 1935); 17 CFR Part 231, set forth at 11 Fed. Reg. 10952 (1946) and reprinted in full in the opinion below (R. 96-100). The portions of the release dealing with such matters as the number of units offered, the size of the offering, and the manner of offering (R. 98-100), relate to situations, not applicable here, where there are indications that the securities have been purchased for redistribution and hence a public offering may be involved even though the initial offering is to an insubstantial number of offerees.

clusion as to the availability of exemption. It made clear that there is no magic number which would mark the boundary of a private offering in every situation. With specific regard to employees, the release pointed out:

. . . an offering to the members of a class who should have special knowledge of the issuer is less likely to be a public offering than is an offering to the members of a class of the same size who do not have this advantage. This factor would be particularly important in offerings to employees, where a class of high executive officers would have a special relationship to the issuer which subordinate employees would not enjoy.

But it was made clear that "an offering restricted to a particular group or class may, nevertheless, be a public offering if it is open to a sufficient number of persons."

The Commission's day-to-day administration of the exemption is reflected in hundreds of informal advisory interpretations of its staff dealing with varying types of proposed offers. The Commission has rarely acquiesced in an offering to more than one hundred persons. An example occurred in March 1951, when a corporation with over 100,000 employees requested a Commission interpretation whether or not an executive stock option program in which the number of participating employees would range from 100 to 220, depending upon the salary level chosen, would constitute a private offering. The Commission replied that it would

not insist upon registration if the company amended the plan to limit the offering to not more than 125 key executives, all of whom were fully familiar with the business affairs of the company.

We believe that the Commission's construction is significant, not only because it is the interpretation of the agency administering the Act²⁹ but also because there has been no proposal in Congress to amend the exemptive provisions here in-

²⁹ The weight to be accorded such an interpretation is suggested in *Securities and Exchange Commission v. Associated Gas & Electric Co.*, 99 F. 2d 795, 798 (C.A. 2): "Moreover, we are dealing with a new act the administration of which is the peculiar function of the Securities and Exchange Commission. One of the principal reasons for the creation of such a bureau is to secure the benefit of special knowledge acquired through continuous experience in a difficult and complicated field. Its interpretation of the act should control unless plainly erroneous. In no other way can the objects of the act be attained without constant and disconcerting friction." See *National Labor Relations Board v. Denver Building Council*, 341 U. S. 675, 690-692; *Boutell v. Walling*, 327 U. S. 463, 470-471.

The Commission's construction is consistent with the construction in a public release of the Federal Trade Commission (which agency administered the Securities Act of 1933 from the time of the enactment of that statute until the creation of the Securities and Exchange Commission in 1934). In its Securities Act of 1933 Release No. 97, at page 4, 17 CFR Part 231, set forth at 11 Fed. Reg. 10949 (1946), the Federal Trade Commission quoted a letter it had earlier written interpreting Section 4(1) of the Act, which stated:

It is difficult to regard the contemplated offering of stock to 2,450 employees of the X corporation as not being a "public offering" within the meaning of Section 4(1) of the Securities Act. It is clear that the word "public" as used in this provision is not limited to offers which are made indiscriminately and open to anyone. For example, an offering confined to the security holders of a corporation may nevertheless be a "public offering" within the meaning of Section 4(1). Otherwise the first clause of Section 4(9) would be superfluous. Where a substantial number of persons is involved, it would seem imprudent to rely upon the second clause of Section 4(1) to give an exemption.

volved subsequent to the rejection by Congress of the 1934 proposal to exempt securities offered to employees.³⁰ Where Congress did see fit to increase the area of exemption, as we have seen, it did so by amending Section 3(b) of the Act to empower the Commission in its discretion to increase the conditional exemptions authorized by its rules from \$100,000 to \$300,000.

CONCLUSION

The order of the Court below should be reversed.

Respectfully submitted,

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Securities and Exchange Commission.

APRIL 1953.

³⁰ This Court has given "great weight" to acquiescence by Congress in a consistent administrative construction. *Costanzo v. Tillinghast*, 287 U. S. 341, 345; *United States v. Jackson*, 280 U. S. 183, 196-197.

APPENDIX

Section 2 of the Securities Act provides in pertinent part:

When used in this title, unless the context otherwise requires—

* * * * *

(3) The term "sale", "sell", "offer to sell", or "offer for sale" shall include every contract of sale or disposition of, attempt or offer to dispose of, or solicitation of an offer to buy, a security or interest in a security, for value; except that such terms shall not include preliminary negotiations or agreements between an issuer and any underwriter.

* * * * *

Section 3(a) of the Act provides in pertinent part:

Except as hereinafter expressly provided, the provisions of this title shall not apply to any of the following classes of securities:

* * * * *

(9) Any security exchanged by the issuer with its existing security holders exclusively where no commission or other remuneration is paid or given directly or indirectly for soliciting such exchange;

(10) Any security which is issued in exchange for one or more bona fide outstanding securities, claims or property interests, or partly in such exchange and partly for cash, where the terms and conditions of such issuance and exchange are approved, after a hearing upon the fairness of such terms and conditions at which all persons to whom it is proposed to issue securities in such exchange shall have the right to appear, by any court, or by

any official or agency of the United States, or by any State or Territorial banking or insurance commission or other governmental authority expressly authorized by law to grant such approval;

Section 3(b) of the Act provides:

(b) The Commission may from time to time by its rules and regulations, and subject to such terms and conditions as may be prescribed therein, add any class of securities to the securities exempted as provided in this section, if it finds that the enforcement of this title with respect to such securities is not necessary in the public interest and for the protection of investors by reason of the small amount involved or the limited character of the public offering; but no issue of securities shall be exempted under this subsection where the aggregate amount at which such issue is offered to the public exceeds \$300,000.

Section 4 of the Act provides:

EXEMPTED TRANSACTIONS

SEC. 4. The provisions of section 5 shall not apply to any of the following transactions:

- (1) Transactions by any person other than an issuer, underwriter, or dealer; transactions by an issuer not involving any public offering; or transactions by a dealer (including an underwriter no longer acting as an underwriter in respect of the security involved in such transaction), except transactions within one year after the first date upon which the security was bona fide offered to the public by the issuer or by or through an underwriter

(excluding in the computation of such year any time during which a stop order issued under section 8 is in effect as to the security), and except transactions as to securities constituting the whole or a part of an unsold allotment to or subscription by such dealer as a participant in the distribution of such securities by the issuer or by or through an underwriter.

(2) Brokers' transactions, executed upon customers' orders on any exchange or in the open or counter market, but not the solicitation of such orders.

Section 5 of the Act provides:

PROHIBITIONS RELATING TO INTERSTATE COMMERCE
AND THE MAILS

SEC. 5. (a) Unless a registration statement is in effect as to a security, it shall be unlawful for any person, directly or indirectly—

(1) to make use of any means or instruments of transportation or communication in interstate commerce or of the mails to sell or offer to buy such security through the use or medium of any prospectus or otherwise; or

(2) to carry or cause to be carried through the mails or in interstate commerce, by any means or instruments of transportation, any such security for the purpose of sale or for delivery after sale.

(b) It shall be unlawful for any person, directly or indirectly—

(1) to make use of any means or instruments of transportation or communication in interstate commerce or of the mails to carry or

transmit any prospectus relating to any security registered under this title, unless such prospectus meets the requirements of section 10; or

(2) to carry or to cause to be carried through the mails or in interstate commerce any such security for the purpose of sale or for delivery after sale, unless accompanied or preceded by a prospectus that meets the requirements of section 10.

Section 17 of the Act provides in pertinent part:

FRAUDULENT INTERSTATE TRANSACTIONS

SEC. 17. (a) It shall be unlawful for any person in the sale of any securities, by the use of any means or instruments of transportation or communication in interstate commerce or by the use of the mails, directly or indirectly—

(1) to employ any device, scheme, or artifice to defraud, or

(2) to obtain money or property by means of any untrue statement of a material fact or any omission to state a material fact necessary in order to make the statements made, in the light of the circumstances under which they were made, not misleading, or

(3) to engage in any transaction, practice, or course of business which operates or would operate as a fraud or deceit upon the purchaser.

* * *

(c) The exemptions provided in section 3 shall not apply to the provisions of this section.

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IN THE

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1952.

SECURITIES AND EXCHANGE COMMISSION,
Petitioner,

v.

RALSTON PURINA COMPANY.

SUGGESTIONS

Of Ralston Purina Company in Opposition to the
Petition of the Securities and Exchange Com-
mission for a Writ of Certiorari.

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SUGGESTIONS

**Of Ralston Purina Company in Opposition to the
Petition of the Securities and Exchange Com-
mission for a Writ of Certiorari.**

The Securities and Exchange Commission has asked this Court to issue its writ of certiorari to review the judgment of the United States Court of Appeals for the Eighth Circuit, dated November 21, 1952, which affirmed the judgment entered on February 20, 1952, by the United States District Court for the Eastern District of Missouri, Eastern Division.

The Commission prays for the issuance of its writ on the ground that the opinion of the Court of Appeals for the Eighth Circuit is in conflict with the opinion of the Court of Appeals for the Ninth Circuit in the case of Se-

curities and Exchange Commission v. Sunbeam Gold Mines Company, 95 Fed. 2d 699, and on the further ground that the opinion of the Eighth Circuit Court erroneously reverses a long standing administrative interpretation by the Commission.

We respectfully submit that the opinion which the Commission is asking this Court to review is not in conflict with the opinion of the Ninth Circuit and that it does not reverse any long standing administrative interpretation.

This litigation was instituted by the Securities and Exchange Commission to enjoin Ralston Purina Company from selling its \$25 par value common stock to certain of its employees, claiming that such sale would be in violation of the registration requirements of Section 5 (a) of the Securities Act of 1933. The Ralston Company consented to the issuance of a temporary restraining order, filed its answer, and the case was heard and tried in the United States District Court for the Eastern Division of Missouri. The only witness who testified orally in the District Court was Mr. Lewis B. Stuart, Vice President, Secretary, and a director of the Ralston Company, and, as later pointed out in the opinion of the Court of Appeals (R. 89-90), the evidence in the case was virtually undisputed. And on February 20, 1952, the Honorable Ruby M. Hulen, Judge of the District Court, after filing a memorandum opinion in which he made findings as to the evidence, and pursuant to such opinion, dismissed the petition. Appeal was taken by the Commission, and the United States Court of Appeals for the Eighth Circuit, speaking through Judge Sanborn, handed down a unanimous decision which affirmed Judge Hulen's opinion in the District Court. Pending the appeal from the District Court, the Ralston Company stipulated that it would not sell or offer to sell any of its stock pursuant to its original plan until the case had been finally determined.

STATEMENT.

The Ralston Purina Company was organized in 1894 and has approximately 7,000 employees. Its net sales for fiscal 1951 exceeded \$340,000,000 and it operates 36 feed mills, 6 soy bean processing plants, and 3 cereal mills, and also operates many warehouses and elevators and 79 retail stores (R. 57). The Company has continuously followed the policy of promoting its personnel from within. From the inception of the Company (at least as far back as 1911), it has had a policy of encouraging stock ownership by key employees (R. 57). Key employees were defined by Mr. Lewis B. Stuart, Vice President, Secretary, and Director, and chief financial officer, as follows:

“A key employee, of course, can be an officer or a department head or an assistant to a department head, but is not confined to an organization chart. It would include an individual who is eligible for promotion, an individual who especially influences others or who advises others, a person whom the employees look to in some special way, an individual, of course, who carries some special responsibility, the management feels is likely to be promoted to a greater responsibility” (R. 58).

The Company has approximately \$10,000,000 of preferred stock outstanding which was underwritten and sold to the public after registration with the Commission. Its \$25 par value common stock (1,229,712 shares) is unlisted, but is dealt in to a certain extent in the over-the-counter market. Particularly since 1942 the Company has offered stock ownership to employees who could meet its test of key employees, and each year has made large bonus payments (for example, in fiscal 1951, \$1,575,000) to its key employees whom the management felt had made a special contribution (R. 59). The reason for selling stock

in limited quantities, to such employees was that the Company felt that it created a greater efficiency because it drew employees closer together, and many of its employees came from the rural areas where proprietorship was a matter of pride to them and the fact that they were at least part owners contributed to their morale and the morale of the Company (R. 58). Stock was made available to these key employees at the end of the fiscal year for the reason that if the key employees whom the Company knew wished to have stock were required, in order to get stock, to bid against each other in the limited over-the-counter market, it would artificially run the price up unreasonably, whereas, when stock was made available to such key employees by the Company at or about the over-the-counter market price, such key employees could use their bonuses to obtain such stock without forcing the market up artificially (R. 59). It was the projected sale of stock to such key employees in the year 1951 which was temporarily enjoined by the Commission and which is now involved in this suit.

The Ralston stock was sold to and bought by these key employees for investment and not for resale or distribution. The District Court's memorandum opinion found it to be a fact that only 17 such employees who purchased this stock in 1947 thereafter sold it, none in 1948, 9 in 1949, and only 4 in 1950, and that such sales in most instances were by persons who had left the Ralston employ at time of sale (R. 48).

In its petition for a writ of certiorari the Commission, as it did in the Court of Appeals, sets forth a number of statements and inferences or conclusions which it wishes to draw from the record which are not supported by the record, and we believe it necessary to point out such statements, inferences or conclusions to this Court and also to

point out wherein it appears that they are erroneous and unsupported by the record.

1. The statement is made on page 5 of the petition that the evidence indicates that the Company used the term "key employees" to include any employee who might have "indicated an interest in the purchase of stock"; and on page 10 substantially the same statement is made that the offering of the Ralston stock was open to any employee who expressed an interest in purchasing it. And again the statement is made at the bottom of page 5 and the top of page 6 that the Company's branch managers indicated that any employees taking the initiative might buy the stock. These inferences or conclusions are directly contrary to the record and to the findings of the District Court and the Court of Appeals. Mr. Stuart, the Company's Vice-President in charge of finances, testified positively and without contradiction that offerings or sales of stock to employees of the Ralston Company had always been limited exclusively to key employees (R. 58). And the District Court found it to be a fact that no common stock was ever sold to any employees except those who were designated as key employees, and only key employees were advised by managers and various department heads that such stock was available for purchase by them (R. 49). In his memorandum opinion the District Court made the following specific findings (R. 54):

"The circumstances of the plan of offering stock to 'key employees' lacks the slightest suggestion of a device to evade the law invoked by plaintiff. The offering has a lawful purpose entirely independent from the objective of the law.

"Plaintiff emphasizes the failure of the resolution by terms to confine the offering to 'key employees'. This is the same type of resolution defendant has used for like offerings in previous years. The resolution is

not the offering—it is authority for the offering. What was done—the facts regarding the manner and reason for the offering, rather than the resolution, show the nature of the offering to be private. Those facts are not in dispute.”

And again on page 10 the petition for certiorari states that the offering was open to any employee who expressed an interest in purchasing the Ralston stock. As we have already pointed out, this is directly contrary to the facts as shown by the record, as found by the District Court, and as found by the Court of Appeals, that never at any time was any stock offered or sold to any employee except those who had actually been classified as “key employees”.

2. And on page 2 of the petition under the heading “Question Presented”, the statement is made that “the offering here involved was made to an indeterminate group of more than 500 employees, including those who had no access to information concerning the issuer’s affairs.” The only testimony as to the number of employees involved is that of Mr. Stuart that no record was kept of the persons to whom the stock was made available, but that his best estimate would be that it was made to between 400 and 500 employees. The District Court in his memorandum stated in this regard (R. 47) that “it (i. e., the Ralston Company) estimated the offering for the year 1951 to have been made to approximately 500 key employees, or 5% to 8% of the total employees”. The statement in the petition that the offering was made to employees who had no access to information concerning the issuer’s affairs is misleading and inaccurate because the undisputed evidence was that more than 75% of the key employees to whom the offering was made were already stockholders of the Company (R. 59). And it was likewise undisputed that the Company’s balance sheet and earnings statement was sent to all stockholders and to banks, investment brokers,

and to the Commission (R. 60). And it was also undisputed that the Ralston Company printed bi-monthly bulletins which were sent to all branches, warehouses, and stores and posted or made available to all employees; and that such bulletins showed the amount of tonnage which the Company was currently producing and selling (R. 48).

3. On page 12 of the petition the word "deceptive" is used. In connection with the use of this word the Commission is evidently undertaking to answer the finding of the District Court and the Court of Appeals that about 75% of the employees purchasing stock were already stockholders and that annual reports were sent to all stockholders, and that sales and production figures were regularly published bi-monthly on the bulletin boards of the Company's places of business; that such information as to such sales and production were made available bi-monthly to all employees. And the claim is being made that the sales and production figures were "deceptive as a measure of profit". In connection with the use of the word "deceptive", petitioners refer to the Exhibit found on page 82 of the record which shows that the Company's annual statement for fiscal 1951 shows that although sales had increased from \$253,000,000 in fiscal 1950 to \$342,000,000 in fiscal 1951, the net income after taxes fell from \$12,560,000 in fiscal 1950 to \$8,784,000 in fiscal 1951. The Exhibit itself, however, affirmatively shows that the fall in net earnings from the previous year was due entirely to two things: the excess profits tax for fiscal 1951, plus an additional \$500,000 excess profits tax due for fiscal 1950. In other words, the only thing that reduced the net earnings in fiscal 1951 was the heavy inroads that excess profits taxes were making on corporate profits, and we submit that it was an improper statement for the Commission to make in this petition that the sales and production figures were "deceptive".

4. The most flagrantly unwarranted statement made in the petition is the one on page 16 where it is said that persons to whom this stock was offered were persons "picked almost at random". This statement is directly contrary to every bit of evidence in the record. It is directly contrary to the findings of the District Court and the Court of Appeals, and it is so unwarranted and unsupported by the record that we have difficulty understanding how such a statement could have been made by the Commission in its petition.

We have felt it necessary to point out to the Court the erroneous statements, inferences and conclusions appearing in the petition for the writ. We have not undertaken to make a full statement of all the facts because they appear in the record and in the memorandum opinion of the District Court and the opinion of the Court of Appeals. We very respectfully request this Court to examine them.

We pass on briefly to the petitioner's contention that the opinion of the Court of Appeals in the instant case is in conflict with the opinion of the Ninth Circuit in the Sunbeam Gold Mines case, 95 Fed. 2d 699. We do not quarrel with either the principle of that case nor the result, but the facts before the Court there were not comparable to those presented here. The Sunbeam Company had stockholders in various states. It entered into an agreement with another company, the Golden West Consolidated Mines, to purchase or acquire through merger all the assets of the latter company. While the agreement was pending, the Sunbeam Company sent through the mails letters to 530 different persons, 115 of whom were its own stockholders, 207 were stockholders of the Golden West Company, and 208 were stockholders of both companies. Those letters solicited pledge loan agreements for the purpose of completing the purchase by Sunbeam of the assets and to raise

money to register contemplated new issue of stock with the Securities and Exchange Commission. Upon signing the pledge loan agreement, each stockholder was to receive a "shareholder's receipt," stated by the Court to be in effect a promissory note of Sunbeam and therefore a security. It was contended there by the Sunbeam Company that because the offer was made only to the 323 stockholders of the offering company and the 207 stockholders of the Golden West Company, it was a private rather than a public offering. The Court of Appeals rejected that contention and said that such a distinction was inadequate for practical reasons (l. c. 701). It went on to say "such an offering, though not open to everyone who may choose to buy, is nonetheless 'public in character,' for the means used to select the particular individual to whom the offering is made bears no sensible relation to the purposes for which the selection was made" (l. c. 701). In the Sunbeam case, the offer was made to raise money for the business and in the instant case it was made to cement employee relationships so as to bring about a closer and more direct interest by the employees in the Company's operations. The Sunbeam case was analyzed and discussed very carefully both in the opinion of the District Court and that of the Court of Appeals. Both Courts carefully distinguished between the factual situation in the two cases and not only did not criticize the decision of the Ninth Circuit, but affirmatively approved it, and held that the situation in the instant case is so different from the facts in the Sunbeam case that a different conclusion must be reached. We refer this Court to the analysis of the Sunbeam case which will be found in the District Court's opinion (R. 51-52). This distinction was emphasized in the opinion of the Court of Appeals as follows (R. 99):

"Our opinion is strictly confined to the precise facts here involved and is not to be taken as a ruling that employees' stock investment plans are generally

within the exception granted by Section 4 (1). If the offering with which we are concerned were made to all employees or employees selected by random or by lot or without any logical basis for the selection, a different question would be presented."

We refer now briefly to petitioner's contention that the decree of the Court of Appeals reverses a long standing administrative interpretation by the Commission. The petitioner here is referring to and cites an opinion of its counsel in 1934 (Footnote, R. 96-100). Apparently the opinion of the Commission's counsel was in reference to a particular case which was presented and his opinion closes by saying that it was a wiser policy not to express an opinion in the situation presented to him (R. 100). As regards this opinion of counsel, it should first be pointed out that it was an interpretation not of rules and regulations promulgated by the Commission, but of the law itself which had been passed by Congress. And in the case of *Norwegian Nitrogen Products Company v. United States*, 288 U. S. 294, 1. c. 325, Mr. Justice Brandeis, in referring to the Federal Trade Commission, said, "the Commission was without competence by any decision it might make to fix the meaning of the phrase **as used by Congress** or the courts. It had power, however, to interpret its own rules and any phrase contained in them." (Emphasis supplied.) The Commission in this case is not relying upon an interpretation of a rule or regulation of the Commission, nor is it even relying upon its own interpretation. It is placing its reliance upon an opinion written by the Commission's former counsel and giving his own opinion as to the factors which should be considered in determining whether or not a public offering exists.

It will also be noted that the counsel's opinion lays down no specific test of numbers, and the specific tests which

counsel does propose are, we submit, met by the Ralston Company in this case. The opinion stresses the number of units offered and the size of the offering because such factors indicate whether or not a public distribution of the securities involved is contemplated. The evidence is clear and undisputed that no public distribution of the Ralston Company stock sold to its key employees was either contemplated or made. Out of a total of 27,763 (R. 11, 18, 19, 29) shares sold to key employees during the years 1947 to 1950, 27,312 (R. 44-45) are still held by the original purchasers and the only resales made were by a few individuals for private reasons (R. 48). Another test given in the Burns opinion is the manner of the offering and there he states that transactions which are effected by direct negotiations by the issuer are much more likely to be non-public than those effected through the use of the machinery of public distribution. No such machinery was used here. A further test and the most important of all in this case is stated in his opinion to be the basis on which the offerees are selected and the relationship between the issuer and the offeree. This last test is particularly stressed in the opinion of the District Court and again in the Court of Appeals. Both opinions consider at length and stress the fact that there existed in this case "a sensible relation to the purpose for which the selection of offerees was made" (R. 53, 98). The trial judge gave great weight to the undisputed fact that the offering was in strict accordance with the Company's consistent policy for many years of securing competent management from within its organization by promotion and encouragement and had found that the selection of offerees was for the purpose of keeping part ownership of the business in the hands of its operating personnel and to secure such ownership from among the key employees throughout the various departments. Again, the District Court's opinion stresses that (R. 52-53):

"The circumstances of the offering under examination are plainly and frankly spread before the Court. They involve no promotion or cash-raising scheme by the defendant. They are the same circumstances that have surrounded a like activity for several years past. Defendant has followed a consistent policy of securing its managerial and executive personnel by promotion within the organization. Without competent management any business must fail. The success of defendant testifies to the soundness of its policy. It desires to continue the policy.

"The sole purpose of the 'selection' is to keep part stock ownership of the business within the operating personnel of the business and to spread ownership throughout all departments and activities of the business. No greater tie, to secure loyalty, could be forged between the corporation and its employees than part ownership in the business by the employees. It is an appeal to the employee's self-interest, but a commendable one. Defendant could confine stock offerings to those high in the executive positions, but that would not accomplish its long range purpose of bringing from the ranks those who represent good prospects for company management. Defendant chooses to call such prospects, together with those who are in executive positions, 'key employee.' Doubtless the name was suggested by the thought that such character of employees is the key to the company's success, past and present. We have examined defendant's definition of 'key employee' and see nothing hypocritical or evasive in it. We do not need expert testimony to understand the purpose of the definition and its application to a private enterprise. Both in accord with sound business policy. Under the definition it calls for an observation of employees whom the company considers 'eligible for future promotion to a position of greater responsi-

bility' in the various departments. They consider whether the prospect is 'ambitious and likely to develop and grow with the Company's business' and who has a beneficial or 'special influence' among other employees, and one who is 'sympathetic to management' and has the interests of the employer at heart. No better way has been suggested to find 'key employees,' that is employees who look like good prospects as part owners to carry on and promote the success of the company. What motive could the defendant have for such a policy other than the one announced? None has ever been suggested. The purpose of the selection bears a 'sensible relation' to the class chosen."

CONCLUSION.

We respectfully submit that the opinion of the Court of Appeals is not in conflict with the opinion of the Ninth Circuit does not "erroneously reverse a long-standing administrative interpretation," and will not in any wise prevent the Commission from carrying out the purpose and intent of the Securities Act. We therefore submit that the petition for certiorari should be denied.

Respectfully submitted,

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Of Counsel.

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No. 512.

IN THE
SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1952.

SECURITIES AND EXCHANGE COMMISSION.
Petitioner,

v.

RALSTON PURINA COMPANY.

On Writ of Certiorari to the United States Court of Appeals
for the Eighth Circuit.

BRIEF
Of Respondent, Ralston Purina Company.

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OPINIONS BELOW.

The opinion of the Court of Appeals (R. 88-99) is reported at 200 Fed. 2d 85. The opinion of the District Court (R. 46-54) is reported in 102 Fed. Supp. 964.

JURISDICTION.

Judgment of the Court of Appeals was entered on November 21, 1952 (R. 100). The jurisdiction of this Court is invoked under 28 U. S. C. 1254. See also Section 22 (a) of the Securities Act of 1933 [15 U. S. C. 77v (a)].

QUESTION PRESENTED AND STATUTE INVOLVED.

The question and the only question before the Court is as to whether the offering of stock here involved, made exclusively to a limited number of "key employees" selected by the Company for sound business reasons, was a private offering and not a public offering within the meaning and intent of the exemption provided in the second clause of Section 4 (1) of the Securities Act of 1933 which provides an exemption from registration for "transactions by an issuer not involving any public offering". Both the District Court and the Court of Appeals for the Eighth Circuit held that the offering of stock here involved was a private offering, not a public offering, and was therefore exempt from registration under the above mentioned provision. This Court thereafter issued its writ of certiorari to review the decision of the Court of Appeals:

STATEMENT.

We feel that it is necessary to make a full statement of this case in order that the Court may have before it as briefly and concisely as possible the evidence which was before the District Court and which was in the Record upon which both the District Court and the Court of Appeals based their decisions, and in the process of doing that, it will be necessary to point out a number of unwarranted and misleading statements found in the Commission's statement in their brief in this Court. We therefore beg the Court's indulgence and careful consideration of the factual situation disclosed by the Record and embodied in the District Court's memorandum of findings and the statements of the Court of Appeals as to what the Record discloses.

The evidence consisted entirely of Exhibits furnished by the Ralston Company at the request of the Commission, with the exception of the oral testimony of Mr. Stuart,

Vice-President and chief financial officer, who was the only witness who testified. And as stated in the Commission's brief, there was no conflict in the evidence.

Ralston Purina Company was organized in 1894. It manufactures and sells mixed feed for poultry and live stock and cereals for human consumption. It had a small beginning, but over the years has grown into a large and very successful company so that it operates 36 feed mills, 6 soy bean processing plants, 3 cereal plants, many warehouses and grain elevators, and 79 retail feed and farm supply stores. Approximately 7,000 people are employed, and net sales for the fiscal year ended September 30, 1951, exceeded \$340,000,000 (R. 57).

The Company has had complete continuity of management and from its inception has drawn its executives and managers of its various branch stores and plants around the country, almost exclusively from within its own organization (R. 57).

For a long period of years the Company has followed a settled policy of encouraging ownership of its stock by persons who were regarded and classified by the Company as being "key employees". It first sold stock to such "key employees" in 1911 and particularly since 1942 has made stock ownership available to employees who met its test of being "key employees". In recent years, beginning in 1942, the Company at the end of its fiscal year has paid what was called a "President's bonus" in large amounts to its employees. The total bonus so paid between 1942 and 1951 was approximately \$6,354,000, the last bonus in 1951 being in the amount of \$1,575,000 paid to 674 employees (R. 59). This bonus was paid only to "key employees". It is not a fact, as suggested in appellant's brief both here and below, that there was any direct relationship between the payment of these bonuses and the stock offerings. No employee was urged or encouraged to invest his

bonus, or any part thereof, in the Company's stock, and certainly no one was required to do so. And there was no pressure of any kind on any employee receiving a bonus to buy such stock. The sole connection between the bonus and the stock offerings was that the payment of the bonus put the individuals in funds to purchase stock if they so wished. The reasons which prompted the Company to wish to sell stock to its key employees were briefly and clearly stated by Mr. Stuart when, in answer to a question as to why the Company so desired, Mr. Stuart testified (R. 58):

"We feel, sir, that that creates a greater efficiency with the company, because it draws employees of the company closer together. Many of our people come from the rural area, where proprietorship is a matter of great pride to them. The fact that they feel that they are owners, at least part owners, in the company, contributes to the morale, and we feel that the idea of breaking down the gap between the ownership and management is something that is highly desirable and something that contributed substantially to the success of the company."

The evidence shows beyond question that the "key employees" who purchased stock from the Company bought it as an investment and not for the purpose of resale. Of the employees who purchased in 1947, only 7 made subsequent sales. None of the 1948 purchasers sold any stock. Nine of those who bought such stock in 1949 thereafter sold, and 4 of those who bought in 1950 thereafter sold the stock so purchased. Except in 10 instances, the employees who sold had left the Company at the time of the sale. Of the 10 instances above mentioned, 5 had retired or bought homes and the reasons for the remaining 5 sales are unknown. No employee who purchased such stock has ever made any complaint in regard to his purchase. (R. 44-45).

In 1945 the Company sold \$10,000,000 in preferred stock to the general public by a public offering after registration with the Commission and has never at any time sold any of its common stock to the public (R. 64). None of the stock at any time sold by the Company to its "key employees" was for the purpose of bringing money into its treasury. (If that had been the purpose, the Company could have retained in its treasury the approximately \$6,354,000 which it had paid out during these years as bonuses.) Mr. Stuart testified that many employees who asked to buy stock had been turned down and many had had their applications materially reduced (R. 61). All sales to the "key employees" were at all times made for the purpose of obtaining stock ownership by certain selected employees for the purpose and in the manner hereinabove stated.

All sales of such stock to "key employees" were made pursuant to resolution of the Board of Directors and the resolution of the Board authorizing such sale in 1951 is set forth verbatim on page 4 of the Commission's brief. This resolution was communicated to the Company's branch and store managers by intra-company memoranda, and the responsibility to determine the "key employees" who would have an opportunity to purchase stock and the number of shares which they might purchase was delegated to those managers who had supervision over and direct contact with a substantial number of employees. However, their selection of the employees who would be entitled to buy was subject to consultation with and approval by the top executives (R. 58). As the trial court found, the managers were depended upon to select "key employees" after the Company executives had conferred with the managers and outlined the matters to be considered in making selections (R. 47). After the "key employees" to whom stock was to be made available had been selected and the number of shares to be made avail-

able to each employee had been determined, the stock was made available to such employees in response to their respective requests. From time to time employees who were not "key employees" were helped in making purchases, not from the Company, but on the open over-the-counter market.

It will be noted that the resolution, itself, does not specify that the stock is to be sold only to "key employees" and the Commission argued below and argues here that the record indicates that the idea of "sales to key employees" was an afterthought. The District Court's opinion, however, disposes of this argument very thoroughly where the Court said, in referring to it, that the resolution was the same type of resolution that the Ralston Company had used for like offerings in previous years and pointed out that the resolution was not the offering, but merely the authority for the offering, and that in fact the offering so authorized by such resolutions **were limited in every instance to employees who had been classified by the Ralston Company as "key employees"** (R. 54).

The testimony of Mr. Stuart as to what Ralston Company meant by the term, "key employees", was

"Those who were officers, department heads, assistants to department heads, or other employees whom the Company considered eligible for future promotion to positions of greater responsibility in the administrative, production, personnel, advertising, sales, or research departments—one who was ambitious and likely to develop and grow with the Company's business and who exercised special influence on other employees and was a leader and advisor to other employees, and was sympathetic to management."

This definition was approved by the District Court as to what the Company meant by the expression "key employees" (R. 47).

When Mr. Stuart was asked on cross-examination to clarify his testimony in respect to what was meant by "key employees" as being employees who are ambitious, sympathetic to management, and who advised others, he said (R. 61):

"Mr. Stuart said that proportionately very few of the key people occupied very subordinate positions in the company. Mr. Sugrue asked, 'In any event, these securities are offered to certain persons occupying very low positions in the company's personnel structure?' Mr. Stuart responded, 'I don't like that word low. They are important people. We are thinking of them as people. They are not big wheels, if you are referring to the big wheels of an organization, but they are key people.'"

The Ralston Company common stock is unlisted, but was dealt in to a limited extent in the over-the-counter market in St. Louis. It was stipulated (R. 9) that over-the-counter sales of this stock to ultimate purchasers for the month of September in each year, 1947 to 1951, inclusive, were fairly representative of such sales for the full year, and the District Court's memorandum opinion (R. 47) set out a brief table showing the yearly sales by the Company in the over-the-counter market to "key employees," compared with sales in the over-the-counter market to the public, as follows:

Year	Yearly Over-the-Counter Sales (Based on September Sales of Each Year)	Yearly Sales to "Key" Employees
	Number of Shares	Number of Shares
1947	8,844	243
1948	1,200	1,120
1949	3,204	10,000
1950	8,544	9,659
1951	11,184	3,769 (applications)

And again on the same question as to what the Company meant by "key employees," Mr. Stuart, on cross-examination, said (R. 61):

"Well, sir, I think that is a matter of influence. I think all of us who have handled people know that there are key people in the various echelons if you have been in military service there were a captain, who perhaps would have felt that one of the lieutenants was a key lieutenant, but you know if you did not have the support of your key sergeant, or the key corporal, or maybe the key private who exercised influence, that you better not go into anything that is very serious; and the same is true in business. Key people are simply not regimented into charts. We don't regiment people in that manner."

The reason for the Company's selling its stock directly to its "key employees" was that if such employees attempted to make like purchases in the limited over-the-counter market, such demand would force the price up artificially (R. 48).

More than 75% of the "key employees" to whom bonuses were paid and to whom stock was offered were already stockholders of the Company* (R. 92). Since 1945 the Company has published a regular annual financial statement which was sent to all of the stockholders, furnished to banks and brokers more or less generally, and filed with the Securities and Exchange Commission, so that approximately 75% of the employees to whom the offering was made were familiar with the Company's sales, profits, general operations, and financial position through such statements (R. 92). And in addition, bi-monthly sales and production records were sent to all the "key" people of

* Of the key employees who purchased stock in the years 1947 to 1950, and who requested an opportunity to purchase in 1951, the following percentage were previously stockholders of the Company (R. 11, 18, 19, 29, 39):

1947	77%
1948	90%
1949	64%
1950	73%
1951	83%

the Company and were available to any employee, so that any such "key employees" who might want to purchase such stock had the information from such statements. And, as testified by Mr. Stuart, tonnage and volume production shown on such statements was the biggest single factor in the Company's success (R. 63).

The Commission's brief undertakes to disparage the value of the information furnished to employees by these bi-monthly statements which show the Company's sales and production records, and argues (Commission's brief, page 12) that it does not follow that the ratio between production and profits is constant, and quotes an article from the Wall Street Journal of December 15, 1951 (R. 63, 82), which stated: "Despite a 35% jump in sales, net income of Ralston Purina Co. for the fiscal year ended September 30 fell to \$8,784,341, from the \$12,560,665 reported for the preceding year." The Commission's brief, however, completely ignores the fact which was disclosed by this same Exhibit that not only had the sales of the Company jumped from \$253,000,000 in 1950 to \$342,000,000 in 1951, but, as also shown by its Exhibit, the net income before taxes had increased from \$12,560,665 in 1950 to \$20,794,065 in 1951, an increase of approximately \$8,000,000 in net profits before taxes. That same Exhibit also shows that the impact on income of excess profits taxes had jumped from \$8,233,400 in 1950 to \$15,369,000 in 1951, plus additional excess profits taxes from the year 1950 of \$500,000, so that, except for taxes, both the Company's sales and tonnage had risen by about 35%, and it was only the heavy increase of excess profits taxes which resulted in substantial fall in the final net profit. It appears, therefore, from the Commission's own Exhibit that the sales and tonnage figures, which were given bi-monthly to the employees, did indicate very clearly continued great progress which was affected only by the impact of excess profits taxes.

ARGUMENT.

Both in the District Court and in the Court of Appeals, the Commission based its contention that the offering here involved was a public offering and not private very largely upon two arguments: the Committee reports in connection with the passage of the Securities Act and amendments thereto and administrative rulings of the Commission. We will take these two arguments up in their order.

The Legislative History Does Not Support the Commission's Construction of the Exemption.

As to the argument based on the legislative history, the District Court said (R. 49):

“We are urged to follow these extra-statutory pronouncements in determining the meaning of the statute. The practice does not appeal to us. We think it should be resorted to only in cases of extreme necessity when the recognized rules for statutory construction fail of their purpose. Language used by Congressional Committees is often loose. That observations of Congressional Committees will thereafter be used by the Courts to determine the meaning of laws passed by Congress cannot be said to have been in the minds of the Committee at the time of their pronouncements. Congress does not purposely pass a vague law. Committee declarations are not intended to be used for the purpose of determining the meaning of Congressional Acts by Congress. They do not represent any expression of either House of Congress. Committees of the two Houses may not agree upon the conclusions to be placed upon their actions. The latter is the case here. In 1934 the Securities Act was amended. At that time a proposal was made in the House to exempt stock issue sold to employees of

the issuer. In Conference Report the House managers of the bill stated as a reason for rejection of the amendment:

“(employees) may be in as great need of the protection afforded by availability of information concerning the issuer for which they work as are most other members of the public.”

“But when the same amendment was before the Senate, the author of a like Senate amendment had the following colloquy with a member of the Senate Committee which considered the amendment:

“‘I agree that when the Senator submitted his proposed amendment it struck me as being entirely reasonable, fair and just. I took it that way. And I can see what he proposes in a favorable light. But when the bill went to conference the House Conferees insisted that there was, first, no reason for the amendment * * *

“‘The contention was, and it seems to me that it is almost unanswerable, that an offering to employees solely, as provided in the Senator’s amendment, is not a public offering. The argument was made that there was no occasion for this amendment, because under the law there would not be a public offering when the stock was offered simply and solely to employees. And that was the effect of the Senator’s amendment. His amendment is limited, as will be seen by its language, which is—

“‘The term “public offering” shall not be deemed to include an offering made solely to the employees.’

“‘I do not believe under the law it really does.’

“**Senator Hastings:** May I inquire—and I make this inquiry because it may be helpful in the future—whether the Senator can say that that was the judgment of the conference itself, or is he speaking only for himself?”

“**Senator Fletcher:** Yes; that is the judgment of the conference itself; that there is no reason why employees should not subscribe for stock, and stock be subscribed for by employees under the law as it is. And certainly there is no question in the world that that the Commission has the authority to declare that such an offering would not be a public one.”

As the foregoing quotation clearly indicates, Senator Fletcher was speaking not merely as a member of, but for the Conference Committee.

And the Court of Appeals in its opinion, also discussing the legislative history of Section 4 (1) of the Act, reached the same conclusion as Judge Hulen and said (R. 96):

“Assuming, however, that recourse properly may be had to the legislative history of Section 4 (1) of the Act, we agree with the District Court that there is nothing in that history which demonstrates that the offerings in suit do not fall within the exemption provided by that Section.”

We have discussed this question of the legislative history for the reason that it points up the basic problem to be here solved. It indicates very clearly that the employer-employee relationship, while by no means the only factor, is a material factor in determining whether or not the offering of securities here involved is a public or a private offering. We ask the Court to understand, however, that we do not contend that an offering made by a company to all of its employees, irrespective of all the other circumstances surrounding the offering, the purpose of the offering, and all the other circumstances and considerations that existed in this case, is exempt from registration. What we contended below and what we contend here is that under all the circumstances, that is, the special class of employees to whom the offering was made; the legitimate and mutually desirable purpose sought to be accom-

plished by the Ralston Company and the past history of similar offerings over a long period of time; the lack of solicitation of any kind; the fact clearly shown that no redistribution would be involved; the absence of solicitation or payment of any commissions to anyone; that more than 75% were already stockholders and all received bi-monthly progress reports; all show a private offering and not a public one.

President Roosevelt, in his message initiating this legislation, said that "the purpose of the legislation, I suggest, is to protect the public **with the least possible interference to honest business.**" (Emphasis supplied.) (See note 13, page 20, of the Commission's brief.) The opinion of the Court of Appeals specifically said that its opinion was strictly confined to the precise facts here involved and that the opinion is not to be taken as a ruling that employee stock investment plans are generally within the exemption (R. 99); and that "there is, we think, virtually no possibility that these offerings, if continued, would frustrate or impair the purpose of the Act" (R. 98). We submit that, in view of the express declaration by the Court of Appeals that its opinion was strictly limited to the precise facts shown by this record, that a reversal of the Court of Appeals would be a serious interference with the operations of an "honest business" and, on the other hand, an affirmation would not interfere with the accomplishment of the purposes of the Act.

There Has Been No Administrative Construction by the Commission Other Than the Opinion of Its Counsel (Release No. 285) and That Opinion Specifically Recognizes the Particular Factors Which Support Our Contention That the Offering Here Involved Was Private and Not Public.

In the Commission's petition for certiorari, the second ground on which the writ was sought was that the opinion

of the Court of Appeals reversed "a long-standing administrative interpretation". Nowhere in the Commission's brief in the Court of Appeals nor here does it say what that "long-standing administrative interpretation" was, except that in the Court of Appeals the Commission set out in full as an appendix to its brief its Release No. 285 dated January 24, 1935, 11 Fed. Reg., page 10952. That Release was a lengthy opinion by the then counsel for the Commission discussing the question of what was meant by the term "public offering". That release is not set out in the Commission's brief here, but appears in full in the opinion of the Court of Appeals (R. 96-100). That opinion of the Commission's general counsel mentioned and discussed the factors which should be considered in determining whether a public or private offering was involved.

The Commission's counsel said "again in determining what constitutes a substantial number of offerees, the basis on which the offerees are selected is of the greatest importance. Thus an offering to a given number of persons chosen from the general public on the ground that they are possible purchasers may be a public offering **even though an offering to a larger number of persons who are all the members of a particular class, membership in which may be determined by the application of some pre-existing standard, would be a non-public offering.**" And so we see here that the offering here involved was to the members of a particular class (i. e., selected key employees) and that membership in this class was and had been determined for many years past by the Ralston Company by the application of a pre-existing standard; that is, that the offering was limited to persons classified as "key employees."

Another factor mentioned in the opinion of the Commission's counsel was as follows: "I also regard as significant the relationship between the issuer and the offerees. Thus an offering to the members of a class who should have

special knowledge of the issuer is less likely to be a public offering than is an offering to the members of a class of the same size who do not have this advantage. This factor would be particularly important in offerings to employees where a class of high executive officers would have a special relationship to the issuer which subordinate employees would not enjoy." In the instant case the offering was not limited to a favored group of "high executive officers." As the trial court found, such a limited offering would not have accomplished the Company's purpose of bringing from the ranks those who represented good prospects for Company management. But it was limited to a special class of key employees, which included top executives and also those likely to rise in the Company to top executive jobs. And more important, this special class of key employees, 83% of them already stockholders and all of them having the benefit of detailed knowledge as to sales and production, certainly bore a "special relationship to the issuer."

The opinion then discusses the number of units offered and says that the purpose of the exemption of the non-public offerings would appear to have been to make registration unnecessary in those cases where the transaction was of such a nature that the securities in question were not likely to be redistributed or come into the hands of the general public (R. 98). And the record here shows without contradiction that the offerings and the purchases were all made for the purpose of investment by the key employees and not for resale to the public, there only having been 20 sales of stock so purchased in 1947-1950 and these sales were made solely for personal reasons of the individual employees who sold (R. 44-45).

Another factor mentioned in the counsel's opinion was that, transactions effected by direct negotiation by the issuer were much more likely to be non-public than those

effected through the machinery of public distribution. The whole tenor of the counsel's opinion was that the determination of a private or public offering was to be from the particular facts and circumstances involved in each case and that no hard and fast rule could be laid down and that each case would have to be determined on that basis.

And the Commission in its Release No. 3439 of May 1, 1952, in the matter of Cristina Copper Mines, Inc. (CCH Fed. Sec. Law. Rep., Sec. 76113, p. 78914), pointed out, as part of the reason for not approving a registration statement, that the offering in question was not confined to stockholders and was not limited to those having any special interest or familiarity with the Company, and that most of the 28,000 shares which Cristina sold were sold to 7 persons and were resold in smaller units shortly thereafter. This Cristina decision by the Commission recognized and reaffirmed counsel's opinion in Release No. 285 as to the importance of the relationship of the offerees to each other and to the issuer and the importance of the question as to whether a resale or redistribution was contemplated after the initial sale. The words used by Congress, "a public offering" and "not a public offering," are not words of art. Congress could, if it had so desired, have specified standards and definitions of the word "public." It did not choose to do so, and apparently intended that the question of whether an offering was public or non-public should be determined upon the particular facts involved in each case. It is significant in how few cases the courts have been called upon to construe this expression, "not a public offering." The Sunbeam case, hereinafter discussed, and the instant case are the only two cases in the courts of appeal which are in point; and the decision of the Tennessee District Court in the case of Securities and Exchange Commission v. Federal Compress and Warehouse Company (which we will hereafter

briefly discuss), constitute the only three cases which we know of which are of help on this question.

In discussing the question as to whether the number of offerees involved in any particular offering was a determining factor, the District Court in its opinion said this (R. 53):

“We take it from the tenor of plaintiff’s brief that if defendant had restricted its selection of ‘key employees’ to less than 100, plaintiff would have no objections to the stock-offering as being a private one. Thus the issue is narrowed—is the stock-offering a public one because made to not to exceed 500 rather than not to exceed 100, out of 7,000 employees. To rule that it is would result in an arbitrary holding that any stock-offering made to offerees in excess of 100 would be public. Neither the statute nor any Congressional report suggests such a standard. It appears to have originated solely with plaintiff.”

We have not been advised and do not know of any rule or regulation promulgated by the Commission stating that the offerees must be limited to any specific number and that if not so limited, a public offering would be involved.

The Commission’s brief, both in the lower courts and again here, cites a number of cases to the effect that the Commission’s administrative interpretations are to be given great weight by the courts. We point out, however, in the first place, that the only interpretation cited or referred to by the Commission is an advisory opinion written by the Commission’s former general counsel giving his opinion as to the factors which should be considered in determining whether or not an offering is public or private. And when the Commission speaks in its brief about the interpretation placed upon the law by the Commission (other than the counsel’s opinion which we have discussed

at length above), it must refer to individualized interpretations issued, so far as respondent is advised, by some member of the administrative body's staff, unpublished and unavailable to the public and applicable necessarily only to the particular case presented to the Commission. We think we have pointed out that, even treating the opinion of the Commission's counsel, above referred to, as "an administrative interpretation," there is nothing in that opinion that is overruled or even contradicted by the two opinions of the lower courts here involved. On the contrary, both of the lower courts discussed and made applicable to this case a number of the specific points put forth and discussed by the Commission's counsel, and applied them to the facts in the instant case. The court will note that the interpretation of a rule or regulation of the Commission is not here involved. There has been no rule or regulation adopted or promulgated by the Commission which touches the question here involved. The question here presented is the interpretation of the meaning of the statute itself. And the interpretation of a statute by an administrative body is a very different thing from an interpretation of a rule or regulation promulgated by an administrative body. This distinction is shown by the statement of Mr. Justice Brandeis in *Norwegian Nitrogen Products Company v. United States*, 288 U. S. 294, 1. c. 325, in which he said, in referring to the Federal Tariff Commission: "The Commission **was without competence by any decision it might make to fix the meaning of the phrase involved as used by Congress or the courts.** It had power, however, to interpret its own rules and any phrase contained in them." (Emphasis supplied.) It is for the courts and not for the Commission to construe and apply the meaning of "public offering" as applied to the facts in any particular case.

**The Decision of the Eighth Circuit Here Involved Is
Not in Conflict With the Sunbeam Case.**

We pass now to the contention that the decision of the Court of Appeals in the instant case is in conflict with the case of Securities and Exchange Commission v. Sunbeam Gold Mining Company, 95 Fed. 2d 699, decided by the Ninth Circuit Court of Appeals in 1938. That case was strongly relied upon by the Commission in its brief and argument both in the District Court and in the Court of Appeals and was fully considered and distinguished by both the lower courts. The Sunbeam case was an appeal from an unreported decision of the District Court. The Sunbeam Company was a Nevada corporation with stockholders in various states of the Union. It entered into an agreement with another company, the Golden West Consolidated Mines, to purchase or acquire through merger all the assets of the latter company. While the agreement was pending the Sunbeam Company issued through the mails letters to 530 persons, 115 of whom were its own stockholders, 207 were stockholders of Golden West, and 208 were stockholders of both corporations. These letters solicited pledge loan agreements for the purpose of completing the purchase by Sunbeam of the Golden West assets and to raise money to register a contemplated new issue of stock with the Securities and Exchange Commission. Upon signing the pledge loan agreement, the stockholder was to receive "a shareholder's receipt," stated by the court to be in effect a promissory note of Sunbeam, and, therefore, a security. The Commission brought suit to restrain the consummation of the issuance of these loan receipts. The lower court denied the injunction and the Commission appealed. In the Appellate Court it was contended by the Sunbeam Company (l. c. 701) that the phrase, "public offering," has but a single, clear meaning and that it is, in effect, equivalent to an offer to every one. Hence, it was claimed that the re-

striction of an offer to a particular group of persons, such as that of the 323 stockholders of the offering company and the 207 stockholders of the company sought to be merged with the offerer, must be a private rather than a public offering.

In the Court of Appeals in this case, at page 21 of their brief, the Commission referred to their brief the Sunbeam case, which stated: "Obviously, the number of persons to whom the offering is made is a vital factor, and if that number is large it may be unnecessary to consider any other elements." That brief also stated that the large number (530) involved "is of itself sufficient to compel the conclusion that the offering is public in character." The Court of Appeals in the Sunbeam case rejected the contention of the Sunbeam Company that the phrase, "public offering," was in effect equivalent to an offer to everyone. It is significant, however, that in its opinion in the Sunbeam case the Court of Appeals gave no consideration whatever to, and completely ignored the Commission's contention that the number alone was sufficient to make the offering a public one. It is also significant that neither in the Court of Appeals nor in its brief here has the Commission again advanced the claim that the number here involved is of itself sufficient to compel the conclusion that the offering was public.

In refusing to accept the contention which was made by the Sunbeam Company, the Ninth Circuit said (l. c. 701):

"We cannot accept this contention. On the contrary, we agree with the view of the appellant that the word public 'is one familiar to everyone, but of the most varied and indefinite connotations. In its broadest meaning the term "public" distinguishes the populace at large from groups of individual members of the public segregated because of some common interest or

characteristic. Yet such a distinction is inadequate for practical purposes; manifestly, an offering of securities to all red-headed men, to all residents of Chicago or San Francisco, to all existing stockholders of the General Motors Corporation or the American Telephone & Telegraph Company, is no less "public," in every realistic sense of the word, than an unrestricted offering to the world at large. Such an offering, though not open to everyone who may choose to apply, is nonetheless "public" in character, **for the means used to select the particular individuals to whom the offering is to be made bear no sensible relation to the purposes for which the selection is made.** For the purposes of an offering of securities, red-headed men, residents of San Francisco, and stockholders of General Motors are as much members of the public as their antithetical counterparts. **To determine the distinction between "public" and "private" in any particular context, it is essential to examine the circumstances under which the distinction is sought to be established and to consider the purposes sought to be achieved by such distinction.' "** (Emphasis supplied.)

We do not quarrel with either the principle of that case or the conclusion reached by the Court. The facts there, we submit, are not comparable to those here. There the class of offerees was composed of all the stockholders of two different corporations—one, the offerer, and the other, a prospective vendor—and the offer was to both sets of stockholders for the purpose of raising money by the sale of securities. The District Court in his opinion discussed the Sunbeam case and referred to the statement of the Court in the Sunbeam case where that Court said:

"To determine the distinction between 'public' and 'private' in any particular context, it is essential to examine the circumstances under which the distinction

is sought to be established and to consider the purposes sought to be achieved by such distinction."

And the District Court continued as follows:

"We think this line of reasoning more in harmony with the statute than the arbitrary one of numbers, wholly absent in the Gold Mines case, and which plaintiff now asks this Court to adopt. An examination of the 'circumstances under which the distinction is sought to be established' by the defendant and 'the purpose sought to be achieved by such distinction' should be examined. We also consider 'is there a sensible relation to the purpose for which the selection' is made by the employer?" (R. 52).

And later in his opinion Judge Hulen, in referring to the number of the offerees as being the proper test to determine whether an offering was public or private, and in connection with the Sunbeam case, said this: "Neither the statute nor any Congressional report suggests such a standard. It appears to have originated solely with plaintiff" (R. 53).

And Judge Sanborn, in rejecting the contention of the Commission that the opinion of the District Court in this case was in conflict with the Sunbeam case, said (R. 96):

"We do not regard the decision of the District Court in the instant case as inconsistent with the opinion of the Ninth Circuit in the Sunbeam Gold Mines Co. case, the correctness of which as applied to the facts of that case we do not doubt. There are obvious distinctions between an offering of securities to all of the stockholders of two companies, parties to a proposed merger, to raise funds to effectuate the merger, and an offering, without solicitation, of common stock to a selected group of key employees of the issuer, most of whom are already stockholders when the offering is made, with the sole purpose of enabling them to secure

a proprietary interest in the company or to increase the interest already held by them."

There is one other case to which we refer the Court briefly, that is, the case of Securities and Exchange Commission v. Federal Compress and Warehouse Company, an unreported decision of the Tennessee District Court (CCH, Fed. Sec. Law Service, 41-44 Decisions, par. 90,106). In that case the Warehouse Company, in the desire to effect the retirement of its preferred stock, made an offer to its holders of common stock to subscribe to certain treasury stock, the proceeds of such subscription to be paid to a trustee who would then be charged with the duty of using the money to retire the preferred stock. The Commission brought suit for injunction. The trial court dismissed the suit without handing down any formal opinion, but did file extensive findings of fact and conclusions of law.

The Court in that case found that:

"There was no advertisement of the arrangement, no public solicitation, directly or indirectly, of any one, but it was merely one to be handled by and within the corporate family of stockholders. This one class alone participated therein. No underwriting was required, and there were no underwriters, nor were the services of any brokers, dealers or salesmen sought or obtained. They were not consulted. Nothing was paid in the way of commission or other remuneration, directly or indirectly, for accomplishing the purpose in view."

The Court also said:

"I also regard as significant the relationship between the issuer and the offerees. Thus, an offering to the members of a class who should have special knowledge of the issuance is less likely to be a public offering than is an offering to the members of a class of the same size who do not have this advantage."

And in referring to what was evidently the opinion of counsel heretofore discussed, the Court said:

"It is further stated in said release (the opinion of counsel) and recognized that the determination of what constitutes a public offering is essentially a question of fact, in which all surrounding circumstances are of moment; in no sense is the question to be determined exclusively by the number of prospective offerees."

The basic distinction between the Federal Compress case and the Sunbeam case is that in the former the trial court found specifically that it was a material factor in determining the question of the designation, "public", or "private" offering that there was a significant and sensible relationship between the members of the class constituting the offerees and the purpose causing the offeror to make the selection. And in the instant case there is a far closer relationship where the offerees consist solely of key employees 83% of whom were already stockholders and who also had the benefit of information supplied by bi-monthly progress reports heretofore mentioned.

The few other decided cases referred to in the Commission's brief clearly involved a factual situation which was radically different from the situation here, as shown by the record. The English Companies Act contains a similar exemption to the one here involved. The author of the article in 80 Solicitors' Journal 785 (1936), quotes the following from *Burrows v. Matabel Gold Reefs and Estates Company* (2 Ch. 23):

"An offer is not the less made to the public because it is made to shareholders and debenture holders as well as to other persons, or because it is not advertised in the public newspapers. But if it is sent solely to the shareholders or debenture holders of the company, there is no offer to the public. The distinction is between the persons who are members or debenture

holders of the company, on the one hand and those who are not, on the other."

We have already referred above, supra, to the Cristina Copper Mines case (Securities Act Release No. 3439, May 1, 1952), where the Commission held that the offering involved was public because it was not confined to stockholders and was not limited to those having any special interest or familiarity with the company. And obviously, Ralston's key employees to whom the offering was made, 83% of whom were already stockholders and received the company's balance sheets every year and had the benefit of the bi-monthly production and tonnage reports, did have special interest in, and familiarity with, the stock which was offered to them.

The Purpose of the Offering.

Mr. Stuart testified, and both Courts found, that the Ralston Company from its inception had had a regular business policy of encouraging stock ownership by its key employees (R. 57). In the earlier part of this brief we set out the reasons for this policy. And again in describing the purpose of the sales, Mr. Stuart said, "We have attempted to have the family remain known as the Purina family, and we call each other very largely 'partner,' and that spirit has been created very largely as a result of this policy of offering stock to a limited group" (R. 60).

We have already shown in our statement that another reason for making the stock available to these key employees from year to year was to avoid their being limited to purchase of stock in the over-the-counter market which would have the effect of artificially increasing the price. It was clearly very desirable from the point of view of each employee who wanted stock, to obviate an artificial stimulation of the price in the over-the-counter market. It is not a fact, as suggested in the Commission's brief, that there

was any direct relationship between the payment of bonuses and the stock offerings. No employee was urged or encouraged to invest his bonus, or any part of it, in the Company's stock, and certainly no one was required to do so. The only connection between the bonus and the making available of stock to such key employees was that the bonus put various individuals in funds to purchase stock if they so desired and without an unwarranted price increase. The Company, in making this stock available, was merely protecting its key men.

Further facts should be noted in this connection. There is not even an inference shown in the record that the purpose of any of these offerings in prior years or in 1951 was to raise funds for the Company. As the trial judge said in his opinion, there would be an entirely different situation if any of the circumstances in the case indicated that the Company was using the excuse of a private offering for the purpose of raising funds. This was further made clear by the fact that when the Company did wish to raise money for the purposes of its business it did so by an issue of preferred stock aggregating \$10,000,000, and in that instance it went to the public, sold the stock through underwriters, and registered it with the Commission. Mr. Stuart pointed out in his testimony the large expense and the delay and difficulty involved in a registration and the impracticability of such a procedure for the limited offering made to key employees that was here involved (R. 64, 65).

The Number of the Offerees and the Amount of the Offering.

There can be no question as to the number of shares of stock offered in 1951 and the years prior thereto, or as to the dollar amount of the offering. Those facts are covered by the stipulation (Pre-trial conference, Exhibits B, C, D,

E, and F, R. 11-44). The Commission's brief, both in the lower courts and again here, raises an issue as to the number of offerees as opposed to the actual purchasers. Mr. Stuart testified that a complete list of key employees to whom stock was offered was unavailable because the offerings were largely made orally and no complete record of them was kept (R. 8). The testimony showed, however, that the estimated number of offerees in 1951 was 400 to 500 (R. 62). Mr. Stuart said that the figure 500 was only an estimate, that "it was not exactly 500, but was not a thousand, but let us say or any number substantially above that" (R. 62). In reading that testimony on this question it is clear that the words "substantially above that" referred to the figure 500 and not to 1,000. Both the lower courts reached that conclusion and accepted the evidence that the offering was to approximately 500, which was about 5% to 8% of all the Company's employees (R. 47).

Both in the lower courts and again here, the Commission seems to take the position that, in order to qualify as a "key employee" the person must be an important executive with over-all company responsibilities, and not a person who does something like managing a branch store or the other types of work which were done by the key employees. In other words, the Commission claims the right, not only to interpret the words, "public offering," but also attempts to determine for itself what constitutes "key employees." It undertakes to argue, although a company in good faith and with sound business purposes at all times and for a long period of years has determined that a key employee is a person who qualifies under the definition given by Mr. Stuart, that nevertheless the Commission will not recognize such persons as "key employees" because they do not fit its own conception of what it regards as a "key employee."

**Unwarranted and Misleading Statements
in the Commission's Brief.**

At the start of our statement in this brief, we said that it was necessary to point out specifically a number of unwarranted and misleading statements found in the Commission's brief in this Court. If they are allowed to pass unchallenged, this Court might get an entirely erroneous impression of what the facts are as shown in the record and as found by the lower courts.

At the top of page 3 of its brief, the Commission stated that the Company failed to prove that its offering was not made to substantially all of its 7,000 employees. The District Judge found that the offering in question was made in fact to approximately 500, or between 5% to 8% of its employees (R. 47). Mr. Stuart testified without contradiction and the court found it to be a fact, that no offering was made at any time by the Company over this entire period to any employees except those who had been classified by the Company, as "key employees" (R. 49).

Again at the bottom of page 10 and the top of page 11 of the Commission's brief, the statement is made that the term "key employee" appears to have included any employee who might have indicated an interest in the purchase of the stock. How can that statement in the Commission's brief be reconciled with the uncontradicted testimony that the Company had never at any time made an offering of stock to any of its employees except those whom it had classified as key employees? On page 10 the Commission's brief makes the conclusion that Mr. Stuart appeared to equate "key employees" to "sales people" and to "production people." There is no evidence to support that conclusion and the Exhibits B, C, D, E, and F referred to above (R. 11-44) show the exact nature of the character of work performed by each one of these key employees. If

a large number of those classified as key employees were salesmen, sales managers, or district sales managers, and production people, both salesmen and production people are extremely important cogs in the Company's operation.

The very surprising statement is made at the top of page 15 that respondent failed to prove that its offering was not made to all of its 7,000 employees. We have already pointed out just above how completely inaccurate that statement is. And substantially the same statement again appears at the end of the first paragraph of the Commission's brief, on page 23. We think it is a fair statement to make that the Commission's brief throughout in this Court (as in the lower courts) attempts to create the impression that the whole idea of making sales of stock to key employees was a subterfuge and merely designed to give color to the Company's contention that this was a private offering and did not have to be registered. And this is done despite the fact that the uncontradicted evidence shows and the lower courts both found that never at any time had the Company sold any of its unissued common stock to the public or to its own employees except to those particular employees whose ties with the Company they wanted to strengthen and who were in good faith and for proper purposes classified by the officers and managers of the Company as "key employees."

CONCLUSION.

We think that the record in this case demonstrates that the decision of the Court of Appeals in this case is not in conflict with the Sunbeam case. We also think that the record shows that the Court of Appeals' decision does not in any way interfere with the accomplishment by the Commission of the purposes of the Act. In this connection we again refer to President Roosevelt's statement when he initiated this legislation that "The purpose was to protect

the public **with the least possible interference with honest business.**" (Emphasis supplied.) If the decisions of the courts below should be reversed, thereby barring a limited amount of stock offerings such as the one involved here, without expensive and impracticable compliance with the registration requirements, it is evident that Ralston could no longer encourage its key employees by giving them the opportunity to become partners in its enterprise. The record in this case shows, and the Commission itself has never even suggested otherwise, that the offering here involved had any element of fraud or imposition, but, on the contrary, was made for sound business reasons following an established practice of many years, which has undoubtedly been one of the factors which has largely contributed to the unusually successful business of the Ralston Company.

We ask this Court to particularly note that in Judge Sanborn's opinion he was careful not to let the decision have the effect of letting the bars down on all stock offerings to employees. On the contrary, in his opinion, Judge Sanborn said that the Court sympathized with the efforts of the Commission, and that the Court was of the opinion that there was no possibility that these offerings, if continued, would frustrate or impair the purpose of the Act (R. 98). He further specifically said:

"Our opinion is strictly confined to the precise facts here involved, and is not to be taken as a ruling that employees' stock investment plans are generally within the exemption granted by Section 4 (1). If the offerings with which we are concerned were made to all employees or to employees selected at random or by lot or without any logical basis for the selection, a different question would be presented" (R. 99).

Congress was concerned with the problem of weighing the real need for protecting uninformed investors from being "sold" on insufficient knowledge against the equally

substantial need of permitting business to operate free of unnecessary legal or administrative handicaps. And the Congressional safeguard was to place restrictions only where it considered them vital for the protection of the purchasing public. If such restrictions are extended so that they include an offering to a special class composed solely of specified employees of the issuer, who had special knowledge and acquaintance with the issuer's business condition and affairs, then we submit that the balance intended by the lawmakers will be lost. And we submit further that the record in this case provides a clear example of a situation where the purposes of the Act will be served best by maintaining that balance. The stock of Ralston Company was made available, "offered," if you please, solely to a restricted group of its own key employees; and offered to such employees not for the purpose of raising money for the Company, but because management felt that the policy of making such sales to key employees was of the greatest importance in maintaining and building up one of the Company's most important assets—its managerial and administrative manpower; and as the trial court found, the success of the Company testifies to the soundness of that policy. We believe that this is a case of first impression—the first case in which an offering to a restricted class of an issuer's employees has been before the court. We submit that the restrictions on that class imposed by respondent itself were both justifiable and reasonable and the offering to that class is not public within the intendment of the Act. We therefore respectfully urge that the Court affirm the decision of the Court of Appeals.

Respectfully submitted,

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